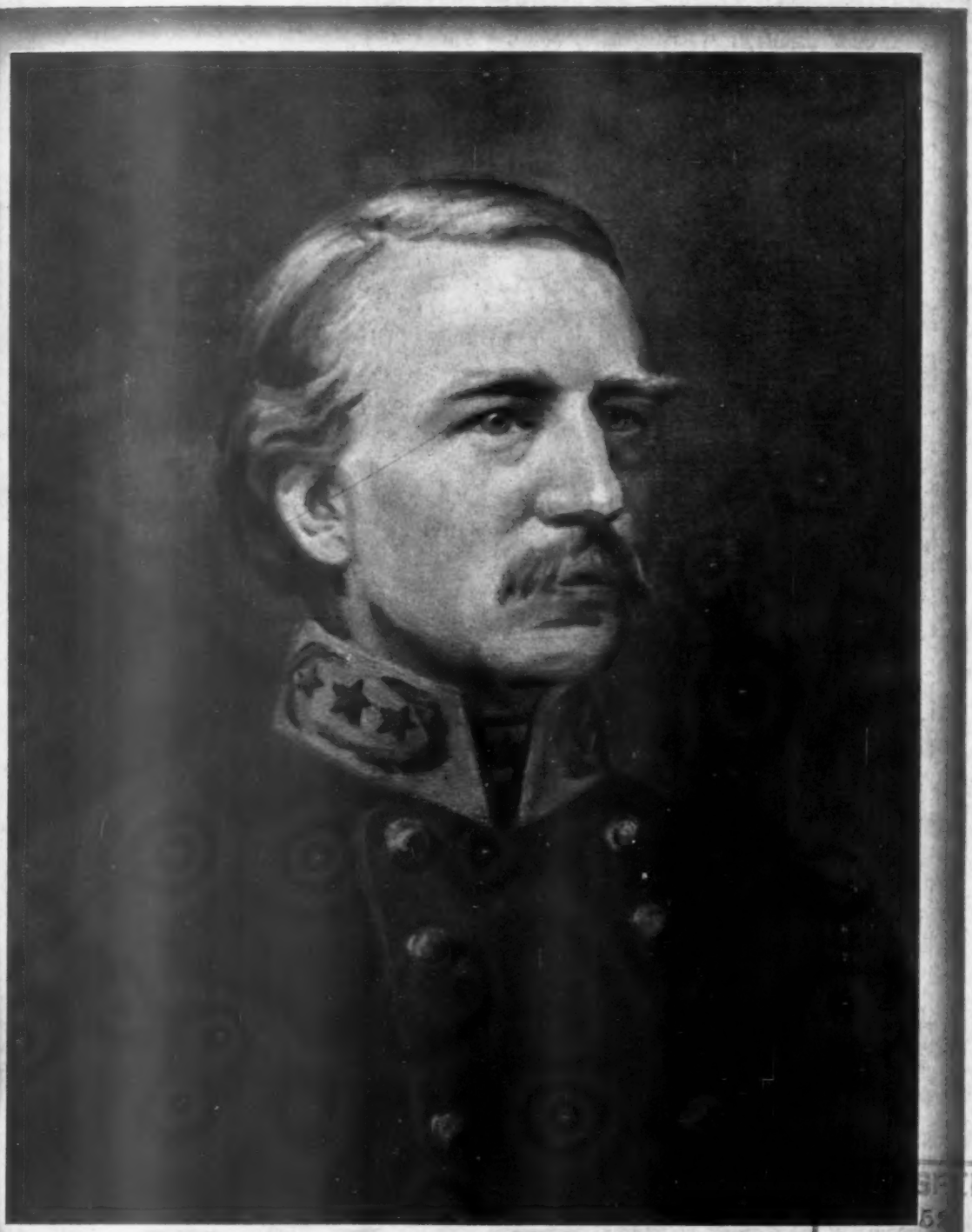

Joseph B. Kershaw

AMERICAN BAR ASSOCIATION JOVRNAL

October - 1943

Re: VOLUME 144 A.L.R.

THE first annotation in volume 144 A.L.R. presents a fine discussion on when a judgment in partition is res judicata. This covers 128 pages and is especially appealing in the minute discussion of the many varied applications of this complex problem. Efficiency in the use of this annotation is increased by a special index accompanying it. «» Another annotation which appears in volume 144 A.L.R. is of peculiar interest to the legal profession. It deals with the power of the legislature respecting admission to the Bar. This annotation shows the nice balance between the legislative and judicial divisions of our government. Every attorney interested in the background of his profession will enjoy this contribution towards solidifying a profession.

THE A.L.R. *War Section*

BEGINNING with volume 137, a separate section of A.L.R. is devoted to legal questions arising out of war conditions. This section now has over thirty automatically supplemented annotations on legal questions affected by war. Be sure to consult the latest volume of A.L.R. on all such questions. «» These few highlights are but a tiny fragment of A.L.R. "Service Through Annotation." They do, however, exemplify the values A.L.R. offers. «» In these days of restricted travel our representatives will not be able to advise you on your law book needs as frequently as under normal conditions. May we, therefore, counsel you by mail? Write us for full information on A.L.R. «» We would also welcome any request for information on any library need you may have.

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There is . . . "a time to laugh" . . .

Ecclesiastes 3:4

The Human Engine

If you get up earlier in the morning than your neighbor, said the town philosopher, and work harder, and scheme more, and stick to your job more closely, and stay up later planning how to make more money than your neighbor, and burn the midnight oil more, planning how to get ahead of him while he's snoozing, not only will you leave more money when you die than he will, but you'll leave it much sooner.

The Truth Sometimes Deceives

A relief worker drove four miles into the country to take supplies to a deserving farmer. Before she left, she checked up on a rumor that had come to the welfare office:

"We are told that you have been seen driving a car. How about it? You know help isn't given to people who own cars."

Promptly the farmer replied: "No, lady, I hain't no car. I drive one once in a while when it is loaned to me."

"Who owns the car?" asked the worker.

"My brother-in-law's sister," he replied. "Sometimes she lets me drive it."

The explanation was satisfactory and the lady drove away. When she had gone the farmer chuckled: "She shore never figured out that my brother-in-law's sister is my wife."

The Secret of Longevity

A Harvard professor, traveling deep in the heart of Texas, found himself seated next to a Texas cowboy and fell into conversation with him. The Texan confessed to 87 years of age whereupon the professor said: "To what do you attribute your remarkable longevity?"

The Texan thought a moment and answered gravely: "Well, I never stole a horse and I never called a man a liar to his face."

Freedom to Take a Chance

A dear old lady visited the Better Business Bureau to complain about lack of promised dividends on a security she had purchased. Upon investigation, it turned out that the whole scheme she had invested in was a fraud.

"Why didn't you consult us first?" the BBB official asked. "We might have saved your money for you."

"I know," said the old lady, "but it sounded so good—I was afraid you wouldn't let me buy it."

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IN THIS ISSUE

Our Cover—Our Historian, George R. Farnum of Boston, has written for this issue a stirring account of the life of Joseph B. Kershaw, the subject of our cover, "Man of the Law and Soldier of the South." This is the eleventh of Mr. Farnum's biographical studies of eminent lawyer-soldiers.

Photograph from Confederate Museum, Richmond, Virginia.

Highlights of the Annual Meeting—The JOURNAL devotes to the record of this year's Annual Meeting more space than most of us can give the time to read in full. The opening pages set out in graphic fashion the general picture. The busiest man can afford the time to read that part of the account.

Since, however, the annual report volume may be postponed and necessarily abbreviated, this issue may be the only source of present information as to what has been done. We, therefore, attempt to supply rather complete information.

War Pattern—The presidential address of George Maurice Morris told in detailed and vivid fashion the generous measure of cooperation on the part of the Association, its officers, and committees in the nation's war effort. He emphasized the necessity of maintaining those activities of the Association which are inherent and essential to its useful life. He emphasized the necessity that the Association and the individual lawyer participate in that part of planning the peace and the post-war world, which lies within the field of jurisprudence. He pointed out that administrative absolutism has been accelerated by the war; that some of it "may be a necessary adjunct of the war, and some of it may be unavoidable even in peace;" that the administrative agency is indispensable to modern government, but he insisted that the administrative process must be kept within the scope of adequate judicial review.

Law and Liberty—The Attorney General of England and Wales, The Right Honorable Sir Donald Bradley Somervell, spoke on this subject at the Fourth Session of the Assembly, Wednesday evening. In the opening remarks of his address, Sir Donald said "It is natural that I should today try to give you a brief outline of liberty and the law in wartime as I see them in my own country, and to relate the law and liberties which we have in common to our association in this world war."

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WASHINGTON SERVICES TO MEMBERS

The Supreme Court Opinion Service will furnish at $1.00 each, copies of opinions by *airmail* as soon as available from the printer. The opinion usually may be had within 24 hours after the decision is announced. The Supreme Court's docket number and the name of the case should both be stated, if known. When these are not known, sufficient description of the case should be given so that it may be readily identified.

The Document Service is an additional service to members. It will furnish other current government documents, publications, and reports, available in Washington, on a similar basis, the base charge for each item requested being $1.00. To this will be added the cost of the document, when not obtainable free, and the cost of mailing; both of which, when known to the members, should be added to the $1.00 for each document and enclosed with the request. *Regular mail will be used in this service unless otherwise requested and extra postage added to the remittance.* It is not contemplated that formal bills will be rendered for cost of the publications and postage where these amounts being unknown, are not sent with the request; but the member will be advised of the amount due at the time the material is sent. Requests under both the above services, should be sent to the American Bar Association, 1152 National Press Building, Washington, D. C.; and all checks drawn to the Association.

Announcement

of

1944 Essay Contest

Conducted by

AMERICAN BAR ASSOCIATION

Pursuant to terms of bequest of Judge Erskine M. Ross, Deceased

Information for Contestants

Subject to be discussed:

"What Instrumentality for the Administration of International Justice Will Most Effectively Promote the Establishment and Maintenance of International Law and Order?"

Time when essay must be submitted:

On or before March 15, 1944.

Amount of Prize:

Three Thousand Dollars.

Eligibility:

Contest will be open to all members of the Association in good standing whose applications for membership in the Association have been received at the headquarters office of the Association in Chicago prior to January first of the calendar year in which the award is made, except previous winners, members of the Board of Governors, officers and employees of the Association.

No essay will be accepted unless prepared for this contest and not previously published. Each entryman will be required to assign to the Association all right, title and interest in the essay submitted and the copyright thereof.

An essay shall be restricted to five thousand words, including quoted matter and citations in the text. Footnotes or notes following the essay will not be included in the computation of the number of words, but excessive documentation in notes may be penalized by the judges of the contest. Clearness and brevity of expression and absence of iteration or undue prolixity will be taken into favorable consideration.

Anyone wishing to enter the contest shall communicate promptly with the Executive Secretary of the Association, who will furnish further information and instructions.

American Bar Association

1140 N. Dearborn Street **Chicago, Ill.**

HIGHLIGHTS OF THE 1943 MEETING

FOR its second Annual Meeting in this time of war, the sixty-sixth convention in its history, the American Bar Association went to the central location of Chicago and the Hotels Drake and Knickerbocker, near its Headquarters, for August 23 to 26. This was the fifth time, in its long history, when the Association had met while the Nation was in the midst of war being waged outside its borders. At all stages, the meeting was a demonstration that both the performance of the tasks which devolve upon lawyers, and the development of an informed public opinion as to post-war relationships, were substantially aided by such an assemblage of lawyers from all parts of the United States.

Because transportation and hotel facilities are largely preempted, and because many members of the Association are either serving in the armed forces or are busy with work incident to the war, attendance at this mid-war meeting was not particularly encouraged. The presence of the members of the House of Delegates, the Chairmen of Sections and Committees, etc., was needed and expected; other members of the Association were left to make their own decisions as to whether or not they would try to come, under the inconvenient circumstances. A large number of the members of the Assembly and House were in uniform.

The total registration of members was 1573, which as a larger number than a year ago. Of this number, 382 were from Chicago or the State of Illinois. The largest delegation from a distance was from the District of Columbia, with 115 members registered. Some 508 members registered took advantage of the opportunity to mark a ballot for the election of Assembly Delegates, to represent in the House of Delegates the members of the Association present in the Assembly in Chicago.

Attendance in the House

The total attendance by members of the House of Delegates was 162, believed to be the largest since the founding of the representative body in 1936. Every state was represented by one or more delegates present in some capacity. Only Hawaii, Puerto Rico, and the Territorial Group (The Philippines, Alaska, and the Canal Zone) were without representation, owing to the war conditions. Most of the states had full delegations on hand, for the transaction of the important business which confronted the House.

International Aspect of Sessions

From the fall of the gavel at the first session of the Assembly to the vigorous message with which the incoming President closed the Annual Dinner, the dominant purpose of the meeting was to plan and do, according to the leadership and the special skills possessed by lawyers, such things as would assist the war effort and promote a unity and militancy of public opinion in furtherance of the common cause. Judged objectively by that standard, which alone could warrant convening at all under the conditions, the meeting, brought together under the leadership of President George Maurice Morris, abundantly justified itself to those who had given it official clearance.

Many of the sessions were honored by the presence of the eminent Attorney General of England, Sir Donald Bradley Somervell, O.B.E., K.C., Member of Parliament, who came to America to attend the Association's meeting and who addressed a brilliant evening session of the Assembly and broadcasted a notable message to America from the Annual Dinner.

From Canada came, as the representative of its Bench and its Bar Association, the genial Mr. Justice C. Campbell McLaurin, and his gracious wife, of Alberta. His address to the Assembly was an interesting and neighborly account of his recent visit, made for the purpose, to the many men from the States who are now in Northwest Canada and Alaska on tasks incident to the war. He told also of some of Canada's resultant legal problems in wartime.

The Association's Assembly provided also the means of accomplishing what the bicameral procedures of the national Congress do not: viz., a virtual debate between Congressman Fulbright, of Arkansas, and Senator Robert A. Taft, of Ohio, on the Fulbright Resolution before the Congress and the policy of the United States for post-war cooperation of the Nations to enforce peace.

Mr. Justice Wiley Rutledge of the Supreme Court of the United States also addressed the Assembly on the steps which lead from victory to peace and the needed post-war collaboration of the nations.

Help for Lawyers

The sessions of the House and Assembly, and particularly those of the various Sections, produced about their usual output of Committee reports and other material designed to be of interest and practical help to lawyers in their professional work. These will be sent to the members of the respective Sections in due course, for the benefit of the many members who could not come to Chicago.

Many of the debates which took place in the Assembly and the House, and the details of the resultant actions voted, will be found to be of more than usual interest this year. They are fully reported in this issue, in the accounts given of the proceedings in the Assembly and

House. Only a few of the more salient items can be referred to in this summary.

Election to Association Membership

The Assembly and the House of Delegates considered in Chicago a filed amendment of Article I, Section 2, of the Association's By-laws, as to the election of lawyers proposed for membership and approved by a majority of their State Admissions Committee. The amendment as unanimously recommended by the Board of Governors proposed that a majority vote in the Board of Governors should elect such an applicant. Prior to 1936, one vote in the former Executive Committee rejected an applicant; the By-laws as revised at Boston in 1936 permitted two negative votes to reject.

The amendment was first considered and debated in the House of Delegates, which decided, by a vote of two to one, to substitute a provision that four negative votes in the Board of Governors would reject an applicant. The Assembly adopted the amendment in the form passed by the House, which thereby became effective.

The Assembly and the House adopted also a resolution which originated in the Assembly and was recommended unanimously by its Resolutions Committee representative of all parts of the United States, to the effect that "it is the sense of this meeting that membership in the American Bar Association is not dependent on race, creed or color."

Strikes in War Plants

The recurring subject of strikes in war production industries led to some of the liveliest debates of the meeting, in each the Assembly and the House. At the opening session of the Assembly, Mr. Louis S. Cohane, of Detroit, offered a resolution in favor of the immediate outlawing of such strikes for the duration of the war. The Resolutions Committee reported unanimously against its adoption by the Association at this time, in view of the comprehensive program approved by the House of Delegates in 1941 and 1942 (A.B.A.J., April 1942, page 175; May 1942, page 261) and the recent enactment of the Smith-Connally Act.

The Assembly rejected, by a vote of 129 to 114, the recommendation of its Resolutions Committee, and passed Mr. Cohane's resolution. When this action came before the House, Chairman Crump sustained a point of order that the resolution was not within the province of the American Bar Association. Under the pressure of time at the final session of the House, no appeal was taken from this ruling. At the ensuing session of the Assembly, President Morris ruled that the resolution was within the province of the Association. The Assembly thereupon reaffirmed its adoption of the resolution, which stands as an expression of the majority opinion in the Assembly, without action on it by the House. A referendum to the membership of the Association was not invoked by the Assembly, in view of the large expense.

"Memphis Agreement" with Realtors

The controversy precipitated by the 1942 "Memphis Agreement" between representatives of the American Bar Association and the National Association of Real Estate Boards, stating the principles to be applied in avoiding conflicts between the work of lawyers and realtors, came to a head at this meeting of the House. The Chicago Bar Association, with the support of the Illinois State Bar Association and others, offered a substitute proposal, on the ground that the agreement involved encroachment on the lawyers' functions.

The Board of Governors helped to negotiate a further agreement with the realtors, whereby at least some of the points of objection were removed. The Board recommended support and approval of the plan for ending the long controversy, in this field of unauthorized practice of law. After extended debate, the House rejected the Chicago substitute and sustained the Board's recommendations.

Former Presidents in Attendance

At the 1942 meeting of the Association, the Assembly and the House amended its Constitution so that those former Presidents of the Association who registered in attendance before 12 o'clock on the opening day of an Annual Meeting were entitled to be ex officio members of the House of Delegates until the next Annual Meeting. By this wise provision, the make-up of the House for the ensuing year was kept determinable. At the same time, the experience and counsel of former Prsidents were made available. Hitherto they were members of the House only if elected thereto in some representative capacity, as several of them were.

In consequence of this recognition, the 1943 sessions were attended by ten former Presidents, which was the largest number in the history of the Association. They were cordially welcomed in the House, and were seated with their respective state delegations. The former Presidents who thus became members of the House of Delegates are, in order of seniority:

Charles S. Whitman of New York	(1926-27)
Silas H. Strawn of Illinois	(1927-28)
Henry Upson Sims of Alabama	(1929-30)
Guy A. Thompson of Missouri	(1931-32)
Scott M. Loftin of Florida	(1934-35)
William L. Ransom of New York	(1935-36)
Arthur T. Vanderbilt of New Jersey	(1937-38)
Charles A. Beardsley of California	(1939-40)
Jacob M. Lashly of Missouri	(1940-41)
Walter P. Armstrong of Tennessee	(1941-42)
George Maurice Morris of the District of Columbia	(1942-43)

Future Meetings

The practicability of holding the usual mid-year meeting of the House of Delegates was wisely left, by a vote of the House, to the Board of Governors, which was given power to act. The practicability, as well as the time and place, of a 1944 Annual Meeting of the Association, rests likewise with the Board of Governors. Many stirring and consequential events will come to pass and affect those decisions, before they have to be made. The public usefulness of the two Annual Meetings which the Association has thus far held in this time of war is an augury for the convening of similar sessions in 1944.

A heartening feature of this year's gathering was the report by Chairman Sylvester C. Smith, Jr., of the 1942-43 Budget Committee that, despite the expanded volume of the Association's war work along with most of its usual activities for the profession and the public, the support given by devoted members and the economies brought about by the Budget Committee and the Board of Governors were such that the operations of each the fiscal year and the Association year were carried to their completion without a deficit or resort to the meager surplus. Chairman Willis Smith of the new Budget Committee announced, however, that repetition of this favorable result could hardly be expected in 1943-44 unless the membership of the Association gives staunch support as to annual dues and sustaining memberships.

Under the organization which the House of Delegates set up last year for the Committee on the Coordination and Direction of the Association's War Effort, President Joseph W. Henderson becomes *ex officio* its Chairman and "Commander-in-Chief." Messrs. Philip J. Wickser, of Buffalo, and Thomas B. Gay, of Richmond, Virginia, have been reappointed to continue their work as the other two members of that "top" Committee.

THE 1943 ASSEMBLY

Originated and adopted twice, contrary to the recommendation of its Resolutions Committee, a resolution expressing the opinion in favor of the immediate outlawing of strikes in war production industries.

Originated and adopted, without division, a resolution unanimously approved by its Resolutions Committee and concurred in by the House, that it was the sense of the meeting that membership in the American Bar Association is not dependent on race, creed or color.

Conducted a virtual debate between Congressman Fulbright and Senator Robert A. Taft concerning the Fulbright Resolution for United States collaboration in post-war plans to enforce peace.

Originated and adopted, with the concurrence of the House, a resolution protesting the disallowance of litigation costs against the Federal Government.

Originated and adopted, with the concurrence of the House, a resolution directed against "group medical service" under federal control.

Elected Messrs. Bruce W. Sanborn, John M. Slaton, Carl B. Rix and Robert F. Maguire, to the House of Delegates, as Assembly Delegates for a two-year term.

Provided the forum for notable addresses by Sir Donald Bradley Somervell, Attorney General of England; Mr. Justice C. Campbell McLaurin, the representative of the Canadian Bar Association; Mr. Justice Wiley B. Rutledge, of the Supreme Court of the United States; Major General Myron C. Cramer, The Judge Advocate General of the United States Army, and Brigadier General Cornelius W. Wickersham, Commandant of the United States School of Military Government.

Held the unusual number of six sessions in order to conduct the program events and dispose of the business on its agenda.

SIXTY-SIXTH ANNUAL MEETING — CHICAGO

Assembly—First Session

At the opening session of the Assembly, the members present were first cordially welcomed by the presidents of the Chicago Bar Association and the Illinois State Bar Association, with an eloquent response by Ex-Governor Slaton. The Attorney General of England brought stirring messages from the Bench and Bar of his embattled land. A service flag in tribute to Association members was accepted, the gift of the Executive Secretary. An outstanding event was the Annual Address, by President George M. Morris. A variety of resolutions were offered from the floor, for hearing and report by the Resolutions Committee and a vote at the "open forum" session. Assembly Delegates were nominated for election by ballot for the full term and to fill vacancies. Meetings of Association members from several states were convened, to fill temporarily such vacancies as existed in the office of State Delegate.

THE first session of the Assembly of the Sixty-Sixth Annual Meeting was convened in the Hotel Knickerbocker, Chicago, on Monday morning, August 23. President George Maurice Morris was in the Chair.

Members of the Chicago Bar Association, famed for their choral singing, led the large assemblage in the national anthem. The convention and its members were welcomed by Judge Floyd E. Thompson, as president of the Chicago Bar Association. "We are glad you folks have come to spend a few days with us," said he, "and we hope to make some modest contribution toward making your stay both pleasant and profitable.

"Chicago is the home of nearly a million families, a third of whom own their dwelling places. It has the reputation of being the most healthful of all the large cities. Some wag has remarked that one has to be healthy to live in Chicago. (Laughter) Big as our city is, it is much the same as yours. The responsible citizens of our community are alive to their duties and obligations, and through their civic organizations are constantly striving to improve social and economic conditions. We claim no special virtues, but we like to feel that we are about average. I think it may be said that we spend more effort doing good than being good.

"Just a word about the job the lawyers have to do if they are to make the same contribution toward keeping democracy practical and making it work which the lawyers have made throughout the three hundred years of our history. By their war activities the American Bar Association and the state and city bar associations have added new luster to an already brilliant record of the Bar of this country. We shall continue to make secondary every other activity until this war is won and peace is established in the world. But we cannot be indifferent to the things that are being said by some whose utterances may give to other peoples of the world entirely false ideas of what our people are planning to do, after we have driven the pirates from the sea and the barbarians back into their lair. Neither our people nor their representatives in Congress have spoken on this subject.

The Place of America in the Post-War World

"The problems in America are big enough for any self-governing people to solve, but the problems abroad are astronomical. Individuals and organizations are speaking and writing of the solution of the problems of the world as though we were supermen and had either the power or the right to establish a new order. The destiny of all peoples is within themselves. These dreamers who are so glibly laying out the pattern for a new order in this world are cruelly leading the less fortunate of the world to believe that we can give to them the freedoms we got for ourselves.

"It is our obligation to better conditions at home and assist where we can according to our power and our means to better conditions elsewhere. It is to our self-interest to live in a world of free people, but it is fanatical to presume that we can bend the world to our conception of social, political and economic standards. To attempt it is to deny to other peoples the very freedom we profess to give them. We can only aid those who take the necessary steps to help themelves. We can lead by example, but we cannot impose our will on others without defeating the very object for which we are sacrificing so much.

Lawyers Should Help Guide and Save Their Country from Post-War Follies

"Lawyers are practical men who know their limitations. They refuse to live in a dream world. In writing our fundamental law they stuck to realities. In our legislative halls, on the Bench, and in public affairs, they have built brawn and sinew into the dream of a government of, by and for free men. If I know the American people, they want all the peoples of the world to enjoy the same blessings we have carved out for ourselves in this glorious country of ours. They want to be honest with the millions of confused people of the world who are looking to us to guide their faltering footsteps in establishing order among them, but they do not want promises made in their name which cannot be fulfilled so that disillusioned people will hate us when they find we cannot deliver.

"Let the lawyers now firmly resolve

to guard our beloved country from follies which threaten its security and independence. Our country needs our leadership in holding to the principles which have made America the most powerful yet the most trusted nation on earth. It is our hope that out of this convention of American lawyers will come a plan for dealing with post-war problems under which we can unite in further service to our beloved country." (Applause)

Welcome Is Extended by Illinois State Bar Association

The convention was next welcomed to Chicago by Mr. Warren B. Buckley, president of the Illinois State Bar Association, who first "heartily endorsed the many nice things which Judge Thompson has told you in his admirable address of welcome." President Buckley then reminded that "Your Association was in session here in Chicago thirteen years ago today. Chicago is again proud to be host to such a wonderful group of lawyers, to whom the people of this Nation are looking for leadership and guidance in the proper solution of the many post-war problems that will inevitably result from the successful conclusion of World War II."

Ex-Governor Slaton of Georgia Responds for the Association

In presenting Ex-Governor John M. Slaton, of Georgia, to make the response in behalf of the Association, President Morris declared that "When Governor Slaton was a young man, he made a decision which was to assist in establishing the rights of man. As Governor of the great State of Georgia, he was in a position to see that the rights of man were observed and the objects of mob hatred were abolished. I have heard it said that by that decision he wrecked his political future. Well, maybe he did, but so far as his own future was concerned and so far as its effect as an example to the lawyers of this country was concerned, generation after generation, his performance has been of infinitely greater value to our community as a whole than could any possible political preferment have been to him. (Applause) His performance upon that occasion was the kind of thing for which the American Bar exists."

Ex-Governor Slaton was given an ovation by the Assembly. He spoke, in part, as follows:

"As I heard the address of welcome, I recalled that when the Georgia Bar Association met in Albany, Georgia, a few years ago, a gentleman offering the hospitality of the city said that his brother lawyers were glad to see us, but did not wish us to establish a residence there.

"In this vibrant, dynamic city of energy and activity the lawyers feel at home. You have unlimited wealth of farm and factory, of mines and quarry, of commerce and industry, which are tributes to the skill of labor, the genius of the inventor, of courage and providence of the banker and merchant. The carpenter has worked with his square and saw, and the master builders have raised into the skies their enormous structures, but there are those whose invisible tools and intangible contributions have rendered possible all of this splendor.

"They are the lawyers. It is only in the atmosphere of justice and law that enduring progress can be achieved.

Tribute to Chicago and to Illinois

"Your splendid City and State, the gateways of the mighty West, were a few years ago the boundaries of the prairies which now feed the world. Your builders possessed the hardier virtues of self-reliance, courage, individuality and industry that never show the wrinkles of time, and maintain their worth through changing dynasties and disappearing nations.

"To your greatness every State has made its contributions. As we think of the immense States west of the Mississippi, there occurs to us the story of the "covered wagon," carrying its inmates through trackless forests and over torrid plains, and frozen mountains. Those brave spirits slept with their rifles in their hands, accompanied by their wives and little ones, who bore the hardships with them, and discovered and established the great western domain of this country, unsurpassed by the conquests of Genghis Khan.

"But there were pioneers who landed at Jamestown and Plymouth Rock. They left the comfort and security of life, the companionship of friends and associates of youth, to endure the severities of a rigorous climate, and the enmity of barbarous savages. Like the pioneers of the western prairies their quest was not wealth, luxurious ease, and physical pleasures, but simply the blessings of liberty, freedom of speech, of worship, of pursuit of happiness, of equality of opportunity.

"To you, the puritan and the cavalier alike sent their treasures. Vermont, with its virtues, as strong as its Northern Lights, sent its hardy sons, and in its limits were born Brigham Young and Joseph Smith. One of those who welcomes us today told me his ancestors came from Old Virginia, the Mother of States.

"I said there was an unseen builder, whose invisible services were often not seen or remembered, the lawyer. I cannot think of Illinois without thinking of its great son, whom one of Georgia's greatest sons, Henry Grady, pronounced in his immortal speech in Boston as the typical American citizen, Abraham Lincoln.

Lawyers Are Defenders of American Constitutional Government

"The lawyers are the custodians of the Constitution. The Convention that adopted it contained thirty-one lawyers. By them, its tenets are regarded as sacred. Preserving it, they are called the slaves of precedent. Precedent never consecrates an error, and allegiance to wrong betokens servility. But the captain wisely directs his ship, laden with passengers, over the charted seas which other vessels have traveled in safety.

"They are charged with lacking vision, but their accusers misuse the word. 'Vision comes not to the dreamer, who beholds in the darkness the irresponsible creations of

fevered fancy; not to the enthusiast who rushes wild-eyed but with heedless step over dangerous and unknown roads to an uncertain fate. Vision in its loftiest sense, the possession of the thinker, the scholar, the true prophet beholds with sight instructed and clarified by the experience of ages, the result of things.'

"It views before arrival the port which can only be reached by following the compass, with its steady needle, and by avoiding the reefs and cruel rocks which have proved the death of many a noble ship.

"Clemenceau, to whose fidelity France can never discharge her obligation, writes in his book on Demosthenes, the model and pattern of all lawyers:

" 'The evil of democracies is that they are quicker to respond to seductive formulas than to facts. Athens lacked nothing except persistence of will. Demosthenes alone saved Athens from defeatist's shame. Calumny and death are among the rewards at which great minds have not the weakness to be astonished. Demosthenes said the lawyer should go to the real question, foresee the consequences and announce them to the people.'

Lawyers Should Continue Loyal to American Concepts

"In this day of bewilderment and confusion, of carnage and destruction, of which Old Time itself has never seen the like, let the lawyers continue their loyalty to those principles which have been so richly rewarded. Let them continue to be the protectors of individuals and of states, of honest toil and adventurous enterprise.

"In this magnificent city the ideals and labors of the lawyer exercise their beneficent influence in every human activity. They guarantee to the employer and employee, the borrower and the lender, the inescapable force of the contract. They assure to the high and the low, the rich and the poor, the strong and the weak, equality before the law, and inalienable rights that were never known before. They assure to the frugal and the provident the rewards of honest work against even the government itself. They pledge that honesty and fairness, on which depend the business of the merchant princes whose commerce would die the moment men cannot trust each other. They guarantee the justice and equity that must prevail between man and man and nation and nation.

"Those are the principles which have inspired the heart and brain of the true lawyer, and their fruition has enriched the worthy everywhere, and has resulted in 150 years in the creation of the happiest, the richest, the most powerful nation on earth, and at this time of worldwide chaos, the one hope of mankind.

"What I have said is only to express our feeling that we are at home in Chicago, and are fellow-workers with your 'Master Builders.'

"A clause in the Constitution of the American Bar Association announces that one of its objects is 'to encourage cordial intercourse among the members of the American Bar.' It was in the Inns of Court, in London, that our ancestors were called to the Bar, after having eaten so many dinners, and as we are obedient to the traditions thus honorably bequeathed to us, we accept the hospitality so generously tendered, and will prove our professional worthiness by this ancient test."

Distinguished Guests of the Association Are Presented

President Morris referred to the presence, on the Assembly platform, of several of the distinguished visitors from other lands, who had honored this meeting by their attendance. He first introduced Sir Donald Bradley Somervell, the Attorney General of England. The audience rose in friendly greeting.

"I am grateful for the opportunity of being introduced to you so that you will know me when you see me," declared Sir Donald, "and also of giving to you one of the messages which I bring with me.

"The first is on behalf of the Bench of England, from the Lord Chancellor, who asked me to tell you first how proud he is of the distinction of being a member of your Association, and with what happy recollections he looks back upon the time when he visited and addressed your Association in this great City of Chicago. (Applause)

"He says, if I may read two sentences which I bring with me from him: 'Certainly, there has never been a moment in history when the things which British and American lawyers unite to cherish were more important not only to ourselves but to all nations, and liberty under law is the foundation upon which the stricken world will be rebuilt.' (Applause)

"Having the proud privilege of being the head of the English Bar, I do, on behalf of the English Bar, bring their greetings to you. Your Association sent us a message in our sternest hours, which we gratefully received and shall long remember. It was a great encouragement to us, in those days when the future was at the best uncertain, to have had that message from our colleagues in this great country.

"I need not tell you with what deep pleasure I got the invitation to visit you this year. I had the opportunity before I left of seeing two of your previous guests whom many of you here will remember, Lord Read, Master of the Rolls, and Sir Norman Birkett. They told me how good a time I should have. They asked me to remember them to all their friends whom I shall meet, and to tell the Association how deeply they value the privilege and opportunity that you have given them.

"Speaking for myself, I shall do my best, I need not say, to justify your invitation. How far I succeed in doing that, I shall in any event and do look forward to learning much from the addresses to which I shall listen, to making friends—and I have already begun to do so, of many who are here present in this room—and last, but not least, I am quite certain that I shall enjoy myself very much indeed. In confident

anticipation, I thank you from the bottom of my heart." (Applause)

The President of the Association next presented the distinguished representative of the Canadian Bar Association, Mr. Justice C. Campbell McLaurin, of the Province of Alberta. The Assembly arose and applauded in hearty greeting.

In Memoriam for Members Who Have Died

Secretary Harry S. Knight announced to the Assembly, with deep feeling, that during the past year, some 222 members of the Association had died. "Many of those," he said, "were men who occupied places of distinction in their profession and were leaders of thought in their communities, and many of them occupied positions of activity and leadership in our Association. As to the latter, the Board of Governors is preparing suitable memorials, to be published at the proper time and presented at the proper places."

The Assembly arose and stood in silence, in memory of its deceased members.

Service Flag Presented by the Executive Secretary of the Association

President Morris spoke concerning the large service flag which hung in the background of the platform. "There is a note of sentiment about that flag," he said. "It is a service flag in honor of those members of the Association who have gone into the armed forces of their country. The number (3691) you see below was the number at the moment this convention came together. The number grows daily. From time to time that number will be changed.

"The touch of sentiment is the source of the gift. That flag has been given to the Association by its Executive Secretary. The Executive Secretary made a personal gift of the flag because, she said, 'I probably know more men in that group and I probably have more friends among that group who have gone into the service of their country than any member of this Association or anyone else connected with it, and I should like to express my feeling toward those men I know, toward those friends of mine who are in the armed services, by this simple symbol.' On behalf of the Association, the President is very happy to welcome the receipt of this rather special gift." (Applause)

Annual Address by the President of the Association

At this point, the Chairman of the House of Delegates, Mr. Guy R. Crump, of California, took the gavel and the Chair. Chairman Crump then introduced the President of the Association, Mr. George M. Morris, to deliver the Annual Address "which is obligatory under the laws of the Association."

President Morris referred humorously to his preparation of the address while riding in airplanes in South and North America, and expressed the hope that its text and ideas would not "disappear into the clouds and go beyond reach of the observers below," as his plane did at times. The address, which is printed in full elsewhere in this issue, commanded the closest attention of the Assembly throughout; and the audience arose and applauded, in tribute.

Resolutions Are Offered for "Open Forum" Consideration

The always lively episode of the offering of resolutions by individual members of the Association, for hearing and report by the Resolutions Committee and action by the "open forum" session of the Assembly, next ensued, pursuant to Article IV, Section 2, of the Association's Constitution.

Mr. Irving H. Flamm, of Illinois, filed a resolution to endorse an international union of nations.

Mr. Louis S. Cohane, of Michigan, renewed his resolution for the outlawing of strikes in war production industries.

Mr. Otto Gresham, of Illinois, offered a resolution as to the practice under, and also as to the constitutionality of, the Act of June 19, 1934.

Mr. Joseph C. Thomson, of New York, submitted a resolution as to the standards for election to membership in the Association.

Mr. William Roy Vallance, of the District of Columbia, filed a resolution thanking the Brazilian Bar Association for the courtesies extended to the delegates to the Second Conference of the Inter-American Bar Association held in Rio de Janeiro, August 7 to 12, 1943, and congratulating the sponsors and hosts on the success of the conference.

Mr. Murray Seasongood, of Ohio, submitted two resolutions relating to the allowance of costs against the United States, its officers, and agencies. "The first resolution includes criminal cases," said he. "If that be too drastic, the second resolution omits strictly criminal cases, and I have a memorandum for the Committee, to submit with that."

Mr. Will Shafroth, of the District of Columbia, filed a resolution calling for the publication, in the AMERICAN BAR ASSOCIATION JOURNAL, of an article by Judge Hatton Sumners in the current issue of the *Readers' Digest*, entitled "Don't Blame the Bureaucrats."

According to the constitutional provisions, the resolutions as filed were referred to the Resolutions Committee, for public hearing and report, without debate at this time. The chairman of the Resolutions Committee, former Attorney General Homer S. Cummings, announced that the first public hearing by the Committee would take place at two o'clock that afternoon.

Assembly Delegates Are Nominated for Election by Printed Ballots

Chairman Crump called for nominations for the office of Assembly Delegates to the House of Delegates, pursuant to Article IV, Section 3, of the Constitution. He stated that the terms of Messrs. James P. Economos, of Illinois, Carl B. Rix, of Wisconsin, Arthur T. Vanderbilt, of New Jersey, and Philip J. Wickser, of New York, as Assembly Delegates, would expire with the adjournment of this Annual Meeting. Of these, Mr. Vanderbilt, as a former President of the Association, had become eligible to membership *ex officio* in the House of Delegates. Present

Assembly Delegates who have a second year of their term to serve were stated to be from Alabama, Michigan, Missouri, and Kansas, so that none of the Delegates to be elected this year could come from any of those states.

Nominations for the four places to be filled for a two-year term were made as follows: Mr. Albert E. Jenner, Jr., of Illinois; Mr. Bruce W. Sanborn, of Minnesota; Mr. John A. Dienner, of Illinois; Mr. Sylvester C. Smith, Jr., of New Jersey; Judge Albert Ewing, of Tennessee; Ex-Governor John M. Slaton, of Georgia; Mr. Joseph D. Calhoun, of Pennsylvania; Mr. Carl B. Rix, of Wisconsin, and Mr. Robert F. Maguire, of Oregon.

When the Assembly had voted that nominations be closed, it was announced that ballots for the election of Assembly Delegates would be printed, and that the polls would be open until Wednesday noon, with any member of the Association eligible to vote. In view of the number of nominees and the distinction of their service to the Association, a lively contest and a difficult choice were forecast.

Vacancies Are Filled in the Office of Delegate

The Secretary announced that Messrs. Douglas Arant, of Alabama, and Philip H. Lewis, of Kansas, had failed to register by twelve o'clock noon on that day. Accordingly, their places were vacant, under the Constitution; and the election of successors, for their unexpired terms, ending with this Annual Meeting, was in order.

Messrs. Loyd H. Sutton, of the District of Columbia, James A. Gleason, of Ohio, and Alvin Richards, of Oklahoma, were nominated for the two vacancies. Ballots were distributed, for voting by the members present. The result was the election of Messrs. Sutton and Gleason.

The Secretary announced further the State Delegates who had failed to register at twelve o'clock noon. Meetings of the members of the Association present from the respective states were announced, to fill the vacancies. The first session of the Assembly was recessed at 12:15 o'clock.

The results of the state meetings of Association members, to fill vacancies in the office of State Delegate temporarily were as follows:

Jurisdiction	*Delegate Absent*	*Temporary Successor*
Hawaii	Benjamin L. Marx	None chosen
Nevada	Charles A. Cantwell	Clarence R. Pugh
Puerto Rico	Martin Travieso	None chosen
Rhode Island	Chauncey E. Wheeler	Frank L. Hinckley
South Carolina	Douglas McKay	Pinckney L. Cain
Territorial Group (Alaska, Canal Zone, the Philippines)	L. Dean Lockwood	None chosen

Assembly—Second Session

The Tuesday evening session of the Assembly was devoted to a presentation of the Association's program of assistance in war work. The distinguished lawyer-soldiers who were the speakers were Brigadier General Cornelius W. Wickersham, the Commandant of the School of Military Government, at the University of Virginia, and Major General Myron C. Cramer, The Judge Advocate General of the Army. Their graphic portrayal of the lawyers' part in the tasks incident to winning the war was followed by a motion picture on "Military Justice and the Court Martial Procedures," prepared under the auspices of the Army and commented on by The Judge Advocate General. The whole session was of absorbing interest to members of the Assembly.

THE second session of the Assembly was convened Tuesday evening, "as a part of the Association's special war program." After the singing of the first verse of the national anthem, President Morris introduced as the first speaker Brigadier General Cornelius W. Wickersham, of New York, the Commandant of the School of Military Government, at Charlottesville, Virginia. In so doing, he referred to General Wickersham's many contributions to legal education and to bar association work, his service with the New York National Guard, his receipt of the Distinguished Service Medal "for exceptionally meritorious and distinguished service . . . in the preparation and execution of the Fourth Army Corps attack at St. Mihiel", France, in 1917, and his adornment with the decoration of the Legion of Honor.

Brigadier General Wickersham addressed the Assembly, in part as follows:

"Shortly before the present emergency, the War Department issued a manual on military government known as Field Manual No. 27-5, based to a very substantial extent on previous experiences in military government, of which we have had many in the past. After the issue of the Manual, the War Department charged the Provost Marshal General with the operating function of training officers for future detail in connection with military government and liaison at a school for military government to be established for that purpose. This led to the organization of the School of Military Government at Charlottesville, Virginia, using facilities furnished by the University that was founded by Thomas Jefferson.

"At this school officers are trained for the performance of their duties in the conduct of civil affairs in foreign territory occupied or that may be occupied by our armed forces. The school today is a part of the military government program of the War Department. The General Staff functions with respect to civil affairs

(Continued on page 554)

WAR PATTERN

By GEORGE MAURICE MORRIS

President of the American Bar Association—1942-1943

MATTERS of great and general public concern have made the pattern for the year, now closing, of the American Bar Association.

Like the American people, our Association has faced three principal problems: first, the successful prosecution of the war; second, the maintenance of those normal activities which are essential even in war times; third, preparation for the post-war world.

The Successful Prosecution of the War

There was a day when the phrase "the successful prosecution of the war," so far as that phrase implies participation by a bar association, was largely a figure of speech. In 1917 and 1918, for instance, the American Bar Association passed resolutions. We resolved that the war should be prosecuted vigorously and, if necessary, troops should be sent abroad for that purpose. We resolved that all lawyers should be helpful to the dependents of those members of the profession who had gone to war. We resolved that enlisted soldiers and sailors seeking legal aid should not be denied. But there is no record of any effort to give practical effect to any of these resolutions.

Today the organized bar is not content merely to pass patriotic resolutions. We are coming of age; achieving something of the quieter but purposeful maturity with which our people, as a whole, are handling this war.

Beginning fifteen months before the attack on Pearl Harbor, the American Bar Association had created and staffed its Committee on National Defense. That group set about stimulating the lawyers to take part in the Selective Service System as members of its boards, as counsel for them and as officials in the System's appellate procedure. In cooperation with state and local bar associations, organizations were perfected in virtually every state, to see that the lawyers actually followed through on such stimulation. The national association's leadership in setting up such activity appears to have been accepted by the lawyers, including state and local bar association officials, as a matter of course. In addition, this close and extensive cooperation of the members of the bar with an agency of the government seems to have been looked upon as a natural function of the coordinated bar.

Our country's declaration of war led to our canvassing other areas appropriate for application of the type of war contribution so successful in the Selective Service field. The Association created, for that purpose, its Committee on Coordination and Direction of War Effort. That group has continued that canvass and has implemented the results. The eleven divisional committees operating with the Coordination Committee have materially aided the American lawyer in achieving his desire to make practical and direct contributions to the war effort.

A feature of the projects these war effort committees are carrying out is the extent of the committees' cooperation with various federal, state, and local governmental agencies. The American Bar Association has jointly sponsored, with the War Department and with the Navy Department, the legal assistance offices for the soldiers and the sailors. This is a rather notable example of such cooperation.

The lawyers in the armed forces and the members of the state and local bar associations are doing a more than satisfactory job in making these offices function. Thousands of lawyers are daily sitting at desks in camps, in committee rooms and in their own offices while the boys in the services pour out to these lawyers the story of their troubles. Many more are listening to the problems of the dependents of the men who have gone to war. Other lawyers are handling matters which come from our soldiers and sailors all over the world. There is nothing like this operation in history. It would be difficult to over-praise the lawyers who are carrying it out.

Our cooperation with the Office of Civilian Defense, the War Manpower Commission and the Personnel Offices of the Army and the Navy are other illustrations of the organized bar's working in close liaison with branches of the government.

There is another aspect of this experience which appears to warrant comment. That is the speed and unanimity with which the many bar associations were able to swing together into action. That performance was made possible by the 1936 reorganization of our Association: the act which created the House of Delegates representative of the profession of the law in the United States. We are reaping the reward of Association statesmanship.

It is highly doubtful whether the American Bar Association would, prior to the constitutional revision of seven years ago, have been so readily accepted as the leader. It is questionable whether, without the acceleration in recent years of the group consciousness of the lawyers, we could have secured the whole-hearted acceptance of such cooperative ideas. These acceptances indicate that we have passed a new milestone in the march of the organized bar.

Maintaining Essential Normal Activities

Our second problem of the year has been the maintenance of those of the Association's activities which are inherent and essential to its useful life. It is hardly necessary to say that such activities are those relating to the administration of justice. The more directly they relate, the more essential they are. The primary duty of a bar association is to promote the administration of justice. The primary reason our country is at war is to preserve the administration of justice. This is the time, of all times, to strive for every improvement of the procedures for doing justice among men and among nations. This is not an occasion for slackening in our efforts to promote an ideal which the whole nation has gone to war to protect.

Belts have been tightened on budgets never far from lean, and many of our sections and committees have felt the drain of the war on their personnel. As a whole, however, the members of the organized bar, and particularly those charged by this Association with the responsibility for doing its work, have gone quietly and persistently ahead with their multiple assignments for improving the processes of administering justice.

For example, notwithstanding the unusual demands which more strident patriotic causes make upon our energies, the members of the bar continue to devote their attention to, and to confer upon, the rules for criminal procedure. Life and liberty are at stake in war but they are frequently at stake in criminal trials also. It means little to be told that you are a citizen of a "free country" if the judicial processes of that country do not give you, as an accused, the fairest possible opportunity to retain your own individual freedom. "Liberty under law" is a mocking phrase if justice is not made as promptly attainable and as certain as human frailties will permit. The demand for the lawyer's maximum war effort will some day pass, but his responsibility for bettering the ways to justice will always abide with him.

We lawyers whom the war effort cannot employ more directly continue to carry on. Our brothers at the bar who have "gone in" would not have us do otherwise.

Preparation for the Post-War World

Modes and concepts of American living have been disrupted by the war. Many persons have seized upon this disruption as an opportunity to put into effect, as a part of the post-war world, measures for which it might be difficult to secure acceptance in normal times.

Probably the more dramatic of these ideas, because of the scope of their possible effect, are those which have to do with international relations. Definite conclusions, however, are to be approached with prayer.

The post-war international world has caught the imagination of the lawyers. One whose duties have required him to do much listening to lawyers in bar association meetings becomes aware of this and learns something of what the members of the bar and the bench are thinking on this subject. An attempted synthesis may be warranted.

In the first place, there is a growing consciousness that there is a difference between mere order, or orderliness, and true peace. The two conditions are quite different. For illustration, consider internal behavior conditions in Nazi Germany and Fascist Italy. Until recently, at least, there was internal order in both of these countries. There was no fighting or rioting; laws and decrees were enforced and order reigned. But this condition was not peace, if by peace we mean that tranquillity which results when a free people, without threat of force, accept their government.

There can be no peace without order, but there may be order without peace. Order the world must have if its peoples are to survive; peace it must have if civilization is to advance. Order may be a condition which the mighty impose. Peace is a condition to which both the mighty and the meek contribute.

In the second place, lawyers know that order, even without peace, may permit of the functioning of laws, courts, and lawyers. They are prone, therefore, to regard with some favor an international arrangement which gives reasonable assurance of affording the kind of order in which courts of justice may function. At the same time, however, these men have an uncomfortable feeling that mere order is not going to be enough.

History has shown that armed revolt and war are the natural consequences of a rule by force. Builders of the temple of justice are wondering, if we achieve merely order without true peace, just how the structure upon which they are working is going to survive another earth-shaking impact such as that which now causes the temple to tremble.

In the third place, it seems to be agreed that we can achieve order and, possibly, true peace if we can eliminate war. It also seems to be accepted that we shall not be able to do away with war until military force becomes the instrument of law (just as a local police force is the arm of the law) rather than the instrument of sovereignty.

The lawyers point out, however, that if we are to reduce military power to serve the uses of the law only, the abolition of all but one military force, under a single command, is necessary. Competing and rival police forces existing in the same area would invite the very conflicts sought to be avoided. To attain one force, operating under one command as an arm of the law, requires that there be a single sovereign power to direct that force. Unless one country succeeds in conquering all the others, any universal sovereign must be one of delegated authority, i.e., a federated government of independent states.

In the fourth place, it seems obvious that if there is to be a single agency with delegated powers adequate to keep order on the earth, every one of the existing and delegating sovereigns must give up some of the authority which it now has. *There* is the rub! Nations have heretofore clung to their sovereign powers as individuals have clung to their lives. The question posed is whether the maximum powers the nations would sur-

render could be made to total the minimum power required to make such a system work. The accomplishment of such an unprecedented phenomenon may require an inspiration springing from a more divine source than enlightened self-interest.

The apparent alternatives to the delegation of authority to keep order afford a bleak prospect. These alternatives include a return to the condition prior to the current war when each nation tried to keep order in the areas of its interest. They include the maintaining of order by joint action of the strong nations.

We have already witnessed the breakdown of the first alternative.

The second alternative would call for the maintenance by each nation of a military force which, while pledged to act as part of an international force, would still remain subject to the authority of the nation which maintained it. If and when that nation chose to withdraw its force from the joint operation, that nation presumably could do so. This would mean, of course, that military force under such an arrangement would remain, in the last analysis, the instrument of sovereignty and not the instrument of law. This is the reverse of a condition that eliminates war as an obstacle to order and to peace.

At the meeting of the Inter-American Bar Association in Rio de Janeiro earlier this month, it was evident that the lawyers of the other Americas are as interested in the shape of post-war international government as are their fellows in this country. They are as aware as we are of the enormous difficulties to be overcome if an acceptable solution is to be evolved. It was apparent that the delegates, particularly those from the bar associations of countries not rated as strong military powers, were greatly worried about the possible setting up of an international system which rested solely upon the ability of a few great powers to impose order. Those men see in such an arrangement an impermanence for law, order and justice among nations. They hold for an international system agreed to by all nations, great and small. While the delegates appeared to be sensible of the present obstacles to the early attainment of such a plan, they gave no evidence of an intention to abandon the ideal.

In the fifth place, the lawyers everywhere appear to be agreed that no international system can ultimately survive, no matter what its other features, if it is not carried on through well-conceived administrative and judicial procedures. If the plan in actual operation does not result in the doing of justice to each party to the arrangement, the eventual withdrawal of that party is virtually inevitable.

For charting the administrative procedures and juridical mechanisms the lawyers feel that they have especial skills. In matters of economics, sociology, and related fields, the lawyers, as lawyers, claim no knowledge which is superior to that of other men, but the members of the bar feel that in the administration of justice they have a training and experience which entitles them to be heard and puts a responsibility upon them to speak.

One of the great purposes of this annual meeting is that we may talk, be heard and discover the areas of general agreement. Let us hope that our discussion will clarify, and not further confuse, our thoughts and the thinking of those who may hear us. Let us hope that we may conclude this gathering with a program of proposals, even though limited in scope, calculated definitely to advance the processes of doing justice among the peoples of all the world.

The Domestic Scene

In the domestic scene there are many post-war projects which draw the attention of the bar. The report of the Association's committee on correlating our post-war planning will refer to some of them. For us, as lawyers, however, there is one subject which, above all others, demands our attention and our persistent, coordinated action. That subject is the law of governmental administration.

Administrative absolutism has been accelerated by the war. Irritating and alarming instances of that development have been experienced by virtually every lawyer, whether he has represented private clients or the government itself. Some of this absolutism may be a necessary adjunct of the war and some of it may be unavoidable even in peace. Also, we must recognize that the administrative agency is indispensable to modern government. Nonetheless, we must get the administrative process within the scope of adequate judicial review. If we do not succeed, we not only will destroy concepts of justice which reach far back into Anglo-Saxon culture, but we shall destroy the foundation of that society, based upon the maximum liberty of the individual, of which Americans still dream.

We lawyers have heretofore attempted to effect controls through published criticism. We have had little support from the public. Its members appear to have been hypnotized, along with some law writers, by administrative devices which we were promised would "get things done." We have had little support from many administrators themselves—men who have been confident that their own good faith in exercising their powers would protect the rights of all honest men from abuse. We have had little support from the legislators, largely, it seems, because they have not been able to satisfy themselves that suggested controls will be effective and still preserve the generally conceded values in the administrative agencies.

There are indications that there may be a change. Reinforcements are marching to our aid.

The people of this country are displaying an increasing irritation with the methods employed in the enforcement of admittedly necessary wartime restrictions. Objectives are accepted as desirable but methods of application are critically questioned. Local authorities have been reported to have refused to cooperate in proced-

ures proposed by federal authorities. Black markets are in operation with an apparent degree of public acquiescence that is disturbing. These conditions are not the fault of any identifiable group of individuals or of any political doctrine. They are, in part at least, the result of the necessary concomitants of a war; untried measures and untrained personnel. Whatever the cause for existing conditions may be, the temper of the proverbial "man in the street" and of the housewife in the kitchen is rising. They are feeling the direct personal impact of the administrative system. This experience has started a line of thinking about the proper extent of administrative authority.

Our Committee on Administrative Law brings us another kind of news. The Committee, describing current conditions in the federal sphere, reports:

> . . . the problem of getting an authoritative decision is often appalling and results impossible. The system too frequently operates to prevent action and it thus is the very antithesis of that flexibility and adaptation which is cited as a basic reason for the existence of administrative justice. The frustration of the citizen in this condition is reflected in public agencies themselves. One agency is pitted against another. It is difficult for Congress itself to discover the precise administrative set-ups which it attempts to investigate on many fronts (Advance Program, p. 176).

Any one who reads the daily papers knows that the members of the Congress are now concerned, to an extent we have not before seen. They are struggling with the problem of discovering what are the authority, jurisdiction and functions of the administrative groups which have sprung up in our wartime government like weeds in a victory garden.

The public is interested because of its largely new, direct contact with administrative action. Administrators, called upon by the war to "get things done," are interested because of the many demonstrated inadequacies of the administrative system. Congress is doubly interested because of the frustration which has followed anxiety. The advance guard of lawyers who have been struggling for corrective action is by way of being reinforced. The main body of the troops is coming up.

We have a bibliography of essays on the administrative system which should satisfy the most voracious reader. We have the many studies and reports of the committees of this Association. We have an authoritative study and report of an official body, the Attorney General's Committee on Administrative Procedure (1939-1941). We have the record of hearings before Congressional committees. Finally, we have the raw material gushing forth from the Government Printing Office—orders, directives, regulations, decisions, press releases, and what not. These diverse materials should be adequate for any formulators of documented proposals.

In short, cumulatively, we have the growing interest of everyone concerned, the ideas and the materials of record. Men of good will should be about ready to work together. The time is ripe for action.

This Association has a manifest duty to map a campaign which will fuse these recited elements for the achievement of a goal which the lawyers, like "a voice crying in the wilderness," have long known must be won if we are to maintain in this country a government of laws and not of men.

Have we something of a chart for such a course?

In the war work of the organized bar, we have been demonstrating, and are continuing to demonstrate, that the organized lawyers can work in harmony with government. For many years sections and committees of this Association have shown, in less dramatic fields, that such cooperation is both feasible and effective. Our Section of Patent, Trade-Mark and Copyright Law, and our Section of Taxation, for example, have worked successfully at the conference table with lawyers who, at the moment, had the government for their client. Together these groups have developed drafts for statutes, rules and regulations which have been embodied in the law. They have worked with the members of the Congress and with state legislature-men, not only upon the principles but upon the details of procedure, administration and practice.

We are experienced in the techniques of these activities. In fact, in the case of most of the older and established agencies of the Federal Government, the members of the bar who appear before them are regarded as part of the advisory personnel to be consulted respecting proposed changes in procedure, practice or administration. Conditions may differ with each agency charged with the task of government, but who can maintain that the techniques of cooperation are not essentially the same in each instance? Let us take advantage of what we have learned and apply it.

Conclusion

In conclusion, permit me to say that he who thinks of the lawyers as a group who lag behind in their thinking on current problems, and who on the vehicle of progress serve as brakes on the wheels rather than as power in the engine, knows little of the organized bar. The predominant purpose in the heart of the nation is to win this war. The bar is not only in rhythm with that purpose, but is examining every avenue to give practical aid to that purpose. The public is aware that this war is not to be won by losing in the process the objectives for which the war is being fought. The bar is acutely alert to this axiom. We are not making our sacrifices of men, materials and living conditions for a post-war international order that will precipitate our children and grandchildren into a struggle of the same character. Difficult as it may be, we shall strive with all the reasoning world not only for order, but for a true and lasting peace.

We lawyers, who are more concerned with the processes of government which bring justice than possibly any other group of men, should recognize our responsibility. The means for meeting this responsibility appear to be at hand in greater degree than before. It remains only for us to seize upon them and go forward.

LAW AND LIBERTY

By The RT. HON. SIR DONALD BRADLEY SOMERVELL, O.B.E., K.C., M.P.

Attorney General for England and Wales

IT WOULD be a great privilege at any time for a lawyer from my country to have the opportunity of addressing this great and representative gathering. It is a very special privilege for me as Attorney General to have the opportunity of speaking to you today.

The Romans used to say, *Inter arma silent leges.* If this meant that once a battle has started it is no good sending for a policeman, it is no doubt as true today as it was then. If it suggests that in a modern war there is nothing for lawyers to do, it is very wide of the mark. The war has of course brought me and others in a similar position many new tasks and new problems. In the geographically narrow limits of my official life in the House of Commons, the Law Courts and the Temple, bombs descended on us, causing as you know great material damage but steeling our hearts and strengthening our determination. So far from stopping, the bombs increased the number of legal problems with which we had to deal. It is therefore a great experience to have this opportunity of making friends and meeting colleagues here and of learning in the all too short time at my disposal something of your great country and all it is doing in these difficult and momentous days in which destiny has cast our lives. I have had the privilege of meeting in England some of your lawyers and of discussing some of our common problems with them.

In spite of the fact that we are two great nations in different parts of the world with our own histories and our own problems, there is a fund of common tradition and similarity of outlook which have made such discussions delightful and, I hope, profitable to you as they undoubtedly have been to us. The welcome I have already received has made me feel not as a stranger among strangers but as one at home and among friends. The bonds which have already existed between the lawyers of the two countries have been immeasurably strengthened by the hospitality and welcome that your Bar Association has always extended to us and is extending to me today.

The struggle in which our two countries are engaged with others today is one in which men daily sacrifice and risk their lives on land, on the seas, and in the air, east and west, not only in the defense of their country and their homes, but in order that evil and tyrannical forces may not triumph throughout the world. Our opponents substitute the rule of fear and the rule of oppression for the rule of law at home, and in their relations with other countries use force and the lie. It is natural that I should today try to give you a brief outline of liberty and the law in wartime as I see them in my own country, and to relate the law and liberties which we have in common to our association in this world war. I hope you will be patient with me if by way of prologue I go back for a short space into the past.

The law of any community embodies the character and the outlook of its members. We are apt to think of the law in terms of the punishment or other consequences which its disregard entails. The law is better thought of as the body of rules which all, or nearly all, believe to be right and are prepared to observe.

In the seventeenth and eighteenth centuries when a variety of motives—a desire for religious freedom, a love of adventure, hope of a fuller and freer life—led men and women to cross the ocean and found here the original Colonies, what law did they bring with them and how did their legal conceptions develop? It would be difficult to imagine environments superficially more different than that which they left and that to which they came.

On the one hand, life in an old country in which the cake of custom had had many centuries in which to harden, a society which had and has preserved except for a short interval its ancient forms, a society which at the times we are considering had still a feudal and aristocratic structure and outlook. On the other hand, life in a new country in which the structure was to make, where forests had to be cleared before the bare means of existence could be wrested from an hitherto uncultivated soil, where each had to make good and make his place in the community by his own efforts, and where everything was in the future, to be built up from first beginnings.

It might have been thought in these circumstances that the law of the old traditional community would have been found inapplicable to the conditions and distasteful to the political and democratic outlook of the new. It would be inaccurate to suggest that the courts of the early days were indistinguishable in their principles and procedure from those in Westminster Hall. Those were stern and rough times and although there were some men of law of great distinction, there were comparatively few trained lawyers. In the result, however, the Common Law, with adaptations and modifications, was found adequate to this new task and became the center of your system as it remained the center of ours. One of the most illuminating books to us on our Common Law—yours and mine—was written by that great American Judge, Justice Oliver Wendell Holmes.

How did this come about? The reason is surely that while England passed from the chaos of the Dark Ages to feudalism, had its ups and downs between King and barons, leading to the rule of the powerful Tudor

monarchs, there was a strong and liberty-loving strain in the people.

In political life it can be traced in the growth of Parliament from 1295 to the great and successful struggle with the Stuart dynasty in the seventeenth century. In administration it can be seen in the part played by local men as Justices of the Peace—not always of course up to twentieth century democratic standards—in their own counties, towns and villages. In literature you find a democratic outlook, although the use of the term is in one sense an anachronism, in or between the lines of Piers Plowman, of Chaucer's prologue, and of Shakespeare's plays. That democratic outlook which found its most complete and most moving expression in your own great poet Walt Whitman. The law was in the main built up by judges dealing with concrete individual cases; and, although they were learned men set apart for their high office, they reflected the outlook of the English common citizen.

In the years when the first Colonies were founded Sir Edward Coke, as Chief Justice, was establishing the rule of law as against despotic and arbitrary power. The principles for which he stood were essential to liberty and to the ideas and ideals of democracy whether in an ancient capital, on the moving frontier of the then new world, or in the highly developed and complex world in which we live today. The great service which the lawyers rendered was that, imbued with the principles of liberty and justice which animated the people, they enshrined them in the law and provided effective legal remedies for their enforcement. They became, as Burke said, an entailed inheritance derived to us from our forefathers and to be transmitted to our posterity.

In the fullness of time you embodied these fundamental principles in your Constitution, though let me not forget in passing the fact of which the Middle Temple is so justly proud, that six of its members signed the Declaration of Independence. In our country the King in Parliament is supreme. There is no liberty or principle which could not in theory be overridden—in an afternoon—by an Act of Parliament. Dupont de Nemours said in a letter to your great statesman and founder, Thomas Jefferson, the bi-centenary of whose birth you have been celebrating this year, "Liberty does not exist only in the laws, which are always more or less badly executed, but in the constant habits of the people." This is the clue to the preservation of our liberties in England, unprotected as they are by a special safeguarding statute, and it is against this strong and constant habit of liberty that the necessary controls and restrictions of wartime have operated in the course of the last four years.

In the concluding days of August, 1939, Parliament passed the Emergency Powers (Defense) Act. That Act gave the Executive power by order in council to make regulations having the full force of statute law as appeared to be necessary or expedient for securing the public safety, the defense of the Realm, the maintenance of public order, the efficient prosecution of the war, and for maintaining supplies and services essential to the life of the community. There are one or two important limitations but they need not be referred to for present purposes. It was recognized, and always has been recognized by Parliament, that in wartime the Executive must be armed with exceptional powers of drastic and rapid action.

It is worth pausing for a moment to remind ourselves that the Common Law itself in its flexibility and its realism recognizes the right to interfere with ordinary rights and liberties if such interference is reasonably necessary to the safety of the Realm or to quell insurrection. Professor Dicey refers to the admitted right of the Crown and its servants to use any amount of force necessary for the maintenance of the peace or repelling invasion, and there are many cases in the books to show that the ordinary laws of property and of personal rights are subordinated in time of war to military necessity.

Although, therefore, the Act provides for a fundamental inroad into our normal legislative procedure, and although by regulations and orders under it there have been drastic interferences with normal liberties, the principle that private rights and normal procedure must give way to national safety is a principle enshrined in the law as laid down by the judges irrespective of parliamentary sanction. The fundamental difference, of course, is that, whereas at Common Law each interference would or might have to be justified on evidence in a court of law as reasonably necessary, the Act gives power to provide a statutory code and statutory sanction for such interferences as the Executive thinks necessary or expedient.

What then are the safeguards for the ordinary citizen? As the Attorney General I have taken part in some of the debates in the House of Commons on this topic, and have conducted a good many of the cases in which defense regulations or action under them have been challenged in the courts. The following is, I think, a summary but correct appreciation of the situation.

The Executive must have very great powers. It must have a considerable latitude in deciding what is expedient for the efficient prosecution of the war or the other related purposes covered by the Act. It must not take more power than it is likely to need, and it must from time to time be challenged to justify and explain this, that, or the other interference. Our "constant habit" of liberty remains alive as an effective and salutary check on any abuse of powers which are recognized as necessary.

The opportunities for this check are many. Each defense regulation is laid before Parliament and can be annulled by Parliament. The procedure is by what is called a prayer. Any one or more members can put down a motion to annul the regulation and the motion comes up for debate after the ordinary business of the day. To give one example—in the early days of the war, at the end of October, 1939, there was a motion to

annul one of the original series of defense regulations. Criticism centered round the then form of the regulation, which is fairly widely known by its number 18B, and another regulation which made it an offense to endeavor to influence public opinion in a manner likely to be prejudicial to the defense of the Realm or the efficient prosecution of the war. In the result the Government undertook to introduce amendments, the form of which was discussed with representative members of the House, and they were of course subsequently laid before Parliament. The scope of 18B was restricted and the regulation with regard to influencing public opinion was altered so that the offense was confined to cases in which the speech or writing was based on a false statement, false document, or false report.

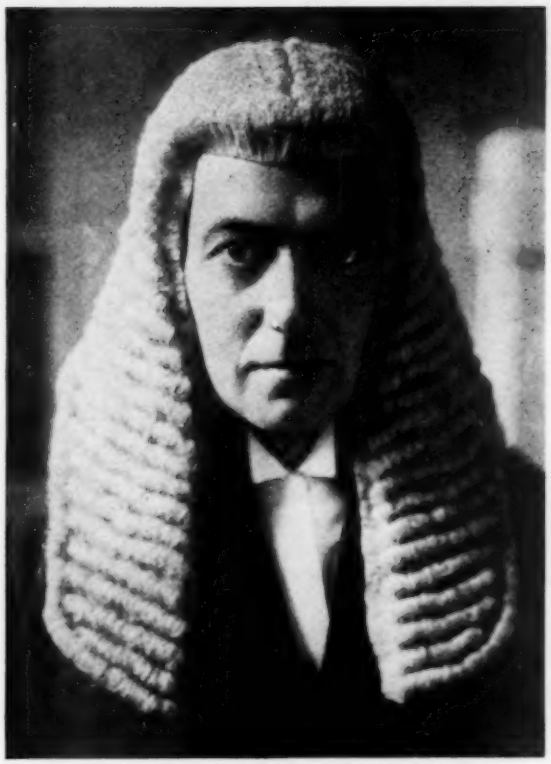
Apart from a parliamentary challenge to individual regulations, the Act itself with its subsequent amendments comes up for renewal every year, giving an opportunity for a general survey of the use being made of the powers. Further, and this is a very important safeguard, administrative action by Ministers in this field, as in others, can be made the subject of parliamentary questions, of which there are on the average some seventy or eighty every day when Parliament is sitting. If an answer is not regarded as satisfactory, the matter can be further explored in a short debate later, and if the House feels that oppressive or unnecessary action has been taken it is quick to make its wishes felt.

The main result of the cases in the courts has been to establish that the question whether a regulation or an order under it is expedient for the efficient prosecution of the war is one to be decided by the Government and not one into which the courts will inquire. This result is, of course, based on the construction of the words used, but it is a principle which has been approved as a principle by eminent judges. In the case of the *Zamora,* Lord Parker said: "Those who are responsible for the national security must be the sole judges of what the national security requires." Lord Finlay, Lord Chancellor, in a case in 1917, said that "it may be necessary in a time of great public danger to entrust great powers to His Majesty in Council."

This, you may say, deprives the citizen of any effective protection by the courts. This would be to give a wrong impression. The courts remain open. All are amenable to the law. I have appeared several times for the Home Secretary to answer to an application for a writ of habeas corpus or to resist a claim for damages.

I have appeared for other Departments on applications to declare orders *ultra vires* or to resist claims for damages. The courts carefully scrutinize the evidence which the plaintiff or applicant produces to see whether an irregularity or departure from the code laid down has been committed. They could and would, of course, act if there were any evidence of corruption or bad faith and if there was a suspicion of bad faith, they would require evidence to dispel such suspicion.

I appeared for the Home Secretary and four Prison



THE RIGHT HONORABLE SIR DONALD BRADLEY SOMERVELL
The Attorney General of England

Governors a few months ago in two cases brought by men who had been detained under 18B. They alleged that they had been subjected to treatment which was not in accordance with the directions given by the Home Secretary and that they had a cause of action for damages. The court decided that there was no cause for action, but the fullest investigation was made in public into their allegations, many of which were admitted. Their grievances were laid before and considered by an impartial judge, and if some wantonly oppressive or brutal act had been established, it might or might not have given them a right of action according to the circumstances; but in any case it would have created an insistent and compelling demand on the part of Parliament and the public that such unjustified actions must not occur again.

I would like to ask, but the answer would be easy, whether in any of the countries against which we are fighting the Executive could be challenged in this way or in the other ways to which I have referred in a court of law.

One does not need quotations or authority in order to mark the contrast between the reign of terror under the Nazi regime and the rule of law under ours. The basis of the Nazi creed is the unlimited power of the executive embodied in the Führer; the inequality of all others before the Herren-volk, who were to dominate first Germany, then Europe, then the world.

They are now retreating not according to plan. The

judges and lawyers have been told where they get off. Hitler is the supreme Law Lord, and he has claimed and, needless to say, obtained from the Reichstag the right to remove any judge who does not do his duty according to his (Hitler's) conscientious judgment. "This world must not be allowed to perish so that some entirely formal justice shall live." There could not be a more complete negation of these principles of justice which to us are the basis of civilized life.

There is no danger to fear that our constant habit of liberty will not fully reassert itself when peace comes, and I have endeavored to show that although we have, and have willingly, surrendered much in order that we may be a nation organized as efficient for war, we remain watchful guardians of those great principles which we are fighting to preserve.

I took some part in the passage through Parliament of the United States (Visiting Forces) Act, which dealt with the position of those members of your Forces who might commit offenses against the ordinary law. Naturally there was never any question as to the right of your Army to try its own members by Court Martial. On the other hand, one important principle embodied in that compendious phrase "the rule of law" is that a soldier is subject, like any other citizen, to the ordinary law.

So long ago as 1678 Sir Matthew Hale said, "Whatever you military men think, you shall find that you are under the civil jurisdiction." Even in wartime with us the most serious offenses against the ordinary criminal law committed by soldiers are tried by civil courts, and a concurrent and if necessary overriding jurisdiction of the civil courts remains over the whole field.

The Act gives your authorities exclusive jurisdiction over members of your Forces for all offenses against the local law. There were various good reasons put forward by your Government in support of their request that we should legislate on these lines. I will refer to one which I, myself, emphasized when I spoke in support of the Bill in the debate.

A criminal offense, say an assault or a theft, committed against person or property in the territory of an Ally is not only a crime but is an offense against discipline. The hall mark of a well disciplined force is that its members respect the persons and the property of their hosts. Your military authorities were anxious that such offenses as occurred should be so treated. Our courts could clearly not have had regard to the disciplinary side of the matter.

There is no doubt a further and important aspect of the matter. If you or I had to be sent to prison we would probably select the court which would inflict the smallest sentence, but on the whole, if we have to be sent to prison, our relatives would prefer that we should be sent there by our own people.

The British Government and Parliament accepted these and other arguments put forward, and I would like to take this opportunity of saying how satisfactorily the arrangement has worked, how complete and harmonious has been the cooperation between your authorities and ours, and how remarkably few cases of serious crime have occurred.

It is impossible to conclude without a few words on the future which lies before our two countries and the world, though it opens up vistas and problems which lie outside the scope of this address. We look forward with confidence to the overthrow of the Axis powers and of Japan. We can only penetrate the soil which hides from us the future of the world by hope, faith, and resolve. Our Prime Minister the other day in a speech at the Guildhall, which, though scarred by bombs still stands in the very center of London, expressed his hope for the association of our two countries:

> "But now I must speak of the great Republic of the United States, whose power arouses no fear and whose preeminence excites no jealousy in British bosoms.
>
> "Upon the fraternal association and intimate alignment of policy of the United States and the British Commonwealth and Empire depends more than on any other factor the immediate future of the world.
>
> "If they walk, or if need be march, together in harmony and in accordance with the moral and political conceptions to which the English-speaking peoples have given birth, and which are frequently referred to in the Atlantic Charter, all will be well."

In a world which science is rapidly decreasing in size, the well-being and prosperity of each nation, including that of the greatest nations, depends more and more on the well-being, the peace and the prosperity of all. Lincoln, in expressing his faith in the United States, referred to the "sentiment in the Declaration of Independence which gave liberty at last to the people of this country, but hope to all the world for all future time. It was that which gave promise that in due time the weights would be lifted from the shoulders of all men and that all should have an equal chance. This" —I am still quoting his words—"is the sentiment embodied in the Declaration of Independence."

It is not for me to suggest policies for my own country, still less for yours. We meet together here today as lawyers, but one thing is certain, that in the settling of these issues and in the working out of the solutions, lawyers, whether as legislators or advisers or as leaders of public opinion, will have a great part to play.

I referred at the beginning to the bonds that had always existed between lawyers in our two countries.

Other bonds are being forged today in the common dangers and hardships of the battlefield and in many other fields in which we are cooperating in our common task of freeing the world from the aggression and oppression of the Axis powers and Japan. May the personal friendships and understanding, which in our field your Association has done so much to foster, multiply. May the bonds between us grow in strength and in content. Whatever the future may hold, may we in our countries and together play a part worthy of the great traditions which we have inherited.

JOSEPH WELLES HENDERSON
President, American Bar Association, 1943-44

PRESIDENT HENDERSON TAKES HISTORIC GAVEL AT ANNUAL DINNER

THE Annual Dinner brought the meeting to a distinguished closing. At the last moment, the gathering had been transferred to the ballroom of the Hotel Drake, in quest of coolness from the air conditioning system. Rapid transformation followed the late adjournment of the concluding sessions of the House and Assembly. The ballroom and its balconies, filled to capacity, soon reflected the usual brilliant scene.

President Morris called the assemblage to order in time to permit the broadcasting of the earlier part of the address of the Right Honorable Sir Donald Bradley Somervell, O.B.E., M.P., K.C., the Attorney General of England. This was heard by a vast audience, throughout the United States and Canada. Then the distinguished visitor spoke movingly but less formally of the conditions of life, law practice, and public administration, in London during the Battle of England.

The second speaker was Mr. Harry E. Meek, of Little Rock, Arkansas, a practising lawyer who has a gift for wit and humor and for pungent phrasing.

The concluding event was the induction of the incoming President, Mr. Joseph W. Henderson, of Philadelphia. The transfer of the historic gavel of the Association from the hands of President Morris to those of his successor took on a dramatic interest because of the origins of that token of the leadership of the Association. The gavel was purchased in Saratoga Springs, New York, for the organizational meeting of the Association, by the late Mr. Francis Rawle, its Secretary for many years, its President in 1902-1903, the last surviving founder of the Association. Mr. Henderson had become associated with Mr. Rawle soon after the former came out of law school; later, he became his partner in the law firm which he now heads. The close friendship which existed between these two leaders in Association work, and Mr. Henderson's great debt to Mr. Rawle for inspiration and guidance, were feelingly referred to by Mr. Henderson, as President Morris gave him the gavel which is emblematic of the Association's presidency.

Mr. Henderson's Induction Remarks

The retiring President paid a hearty tribute to his successor. Both of them received a spontaneous ovation from the audience, in appreciation of their effective work together. Mr. Henderson spoke briefly, in making known his point of view as to the Association's work during the critical year ahead. He said:

"Mr. President, distinguished guests, members of the Association, ladies and gentlemen. Mr. President (because your term of office has not yet expired), nothing could be more gracious than your introduction, and I appreciate very sincerely and deeply the honor and opportunity which has come to me. It is without question the greatest distinction that the organized Bar can bestow upon a fellow member. I accept most humbly and simply, and I trust that during the coming year my actions will justify and merit the confidence which has been placed in me.

"We all must assume our responsibilities, and I shall accept mine as best I can. I do so with the hope that this group, and our other loyal members, the official body and the outgoing President (who has my very warm affection), will give to me all the help that is asked of them.

"I know that you will permit me a personal reference for a moment, since my emotions are greatly touched when I grasp the handle of this gavel. This gavel has a very interesting history. When the Association held its first meeting in Saratoga Springs in 1878, the Secretary, finding that there was no gavel available, went to a nearby hardware store and bought this carpenter's mallet for the sum of 25 cents. It did not then have on it the silver and gold bands. The hand that first grasped this gavel officially for the American Bar Association was the same guiding hand that took me into his office thirty years ago as a young boy just out of law school. He was a gentleman, a great lawyer, Treasurer of the Association for years, its President, and the last surviving founder, Mr. Francis Rawle. He loved the American Bar Association, was devoted to it, and worked unceasingly for its best interests; if there is anything in heredity by association I feel that he inculcated into me a part of that devotion. If he knew that this great distinction is returning to his old office, he would be very happy. I hope he knows; perhaps he does.

Forecast of Work of the Association

"This Association is, and has been, a crusading, militant organization; it is the watchman on the tower, seeing to it that the rights of the individual and property are not violated, and that we are a government according to law, rather than a government by men.

"American lawyers are the staunch defenders of human rights and the American system of private enterprise, and especially now will they take that leadership.

"What are we going to do this coming year? The war work will carry on. The war is not yet won, pray God it may be soon; but until it is, we must devote our greatest energy toward its successful prosecution. This Association and all affiliated organizations will continue that work with unabated vigor.

"Then will come the post-war readjustments of gravest

importance. We must now do our planning to provide solutions for such problems as juvenile delinquency, reorientation of lawyers returning from armed service and the government jobs, the renegotiation of contracts, and their cancellation, and many others.

Declaration for Impartial Review

"We must also devise means to bring home to the practising lawyer, where necessary, the materials that he needs in order to be able to practise before administrative tribunals and other governmental agencies. The eternal fight toward the improvement of the administration of justice will be carried on under the leadership of Judge Parker.

"The time has now also arrived when we must press with all our strength for the reforms needed to secure justice under law before administrative tribunals, both state and federal, and the enactment of necessary legislation to procure a fair and workable administrative procedure, with the right therein of an impartial review before an established court of justice.

"These are some of the problems that will be tackled. There are many others, and we hope some will be solved.

"I know that we who are meeting here tonight will accept with courage and strength the opportunities and duties imposed upon us. I can only say for myself that these opportunities and duties will be met seriously and I hope efficiently. I assure you that I will give to the Presidency of this great Association the best that is in me.

"I now declare this memorable war meeting of the Association under the leadership of a great President, Mr. George Maurice Morris, adjourned."

BOARD OF GOVERNORS' MEETINGS

By JOSEPH D. STECHER
Assistant Secretary, American Bar Association

THE Board of Governors of the Association held seven sessions at Chicago, Illinois, on August 20, 21, 23 and 27. Those sessions which preceded the opening of the annual meeting were devoted largely to the consideration of reports of sections and committees, action upon which is reported in the proceedings of the House of Delegates. Such action followed adoption by the Board of a new procedure for discharging the duty imposed upon it by the Rules of the House of supervising the work of the sections and committees and of transmitting to the House their reports together with any recommendations or comments as to such reports which the Board may see fit to make.

Recognizing that the power to recommend and comment is one which should be and is sparingly exercised because, in most instances, members of the Board have no superior knowledge of the subjects covered by the reports, it was agreed that under these circumstances the Secretary will merely state that the report is transmitted without comment. Where, however, a report deals with policies of the Association which the Board has or has had under consideration, or the Board has information which may be helpful in discussing the reports, it is believed that recommendations or comments are appropriate.

The new procedure, therefore, calls, in the first instance, for the assignment by the Board of one of its members to each section and committee to effect a liaison between the sections and committees and the Board throughout the year and in any case where this does not bring about agreement as to a report, opportunity will be given for the section or committee to present its views to the Board before any recommendation or comment is made.

A change in the method of presenting recommendations and comments to the House is also provided. Believing that the merely formal reading of comments not infrequently fails to reflect the consideration which the Board has given the subject and the reasons for its conclusions, the Board has provided that hereafter when its action is unanimous it will be stated by the Secretary, or some other member of the Board, and the reasons given. When the Board itself is divided, some designated member will make the presentation and will state the division and an opportunity will be afforded for the minority of the Board to state its position. It is believed that this plan will be of advantage to sections and committees in the preparation of their reports and to the House in its consideration of them.

Discussion of the annual Ross Essay contest resulted in the selection of the following subject for 1944:

> "What Instrumentality for the Administration of International Justice Will Most Effectively Promote the Establishment and Maintenance of International Law and Order?"

The amount of the award was fixed at $3,000.

Acting upon the request of James Grafton Rogers that he be relieved of his duties as a member of the Board of Editors of the AMERICAN BAR ASSOCIATION JOURNAL for the duration of his war service, the Board of Governors elected Walter P. Armstrong, of Memphis, Tennessee, to serve during the interim. The vacancy on the Board of Editors caused by the expiration of the term of Charles P. Megan was filled by the election of Tappan Gregory, of Chicago.

(Continued on page 603)

Assembly—Second Session

(Continued from page 542)

in military government, including the planning and coordination of our military government effort, are in the hands of the newly established Civil Affairs Division of the General Staff.

"When our front line troops invade enemy territory, the powers of the hostile government cease to exist. By international law, the occupant then becomes responsible for the maintenance of law and order in the occupied territory and must exercise or arrange for the exercise of the functions of civil government and the maintenance of public order. The exercise of military government is a command responsibility, and full legislative, executive and judicial authority is vested in the commanding general of the theater of operations. By virtue of his position he or his delegate is the military governor of the occupied territory and his supreme authority is limited only by the laws and customs of war and by such instructions as he may receive from higher authority.

"Our Manual states that the first consideration at all times is the prosecution of the war to a successful termination. The administration of military government is and must be subordinate to military necessities involving the operation, security, supply, transportation and housing of our troops.

"The school does not attempt to train lawyers to be lawyers, fiscal experts to be fiscal experts, or engineers to be engineers. They must have those qualifications before they can be enrolled. What the school does endeavor to accomplish is to give to the students instruction and training and information with respect to the problems with which our graduates will be faced.

"The officers who are trained at Charlottesville are obtained partly from the army and partly by the commissioning of specially qualified men from civil life. The latter are obtained for us by the Officer Procurement Service of the Army, some of whom obtain their training at Custer and the specialists schools, and a small percentage are selected for the School of Military Government.

"There are a considerable number of legal questions which arise incident to the military occupation, the functioning of the local authorities and military necessity.

"In the first place, territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends to the territory where the authority has been established and can be exercised. When the fighting is over, we legally occupy the front line positions and all the area to our rear from which all substantial bodies of enemy troops have been cleaned out. The occupation is effective for all purposes of military government, although there may be many square miles which our troops have never entered and notwithstanding the fact that there may be isolated pockets of enemy resistance or guerrilla bands wandering about in remote districts.

"Under the rules we can demand and enforce obedience on the part of the inhabitants, but we must respect their persons, domestic relations and religious beliefs. They are expected to carry on their usual occupations; to take no part in the hostilities; to refrain from all injurious acts toward our troops, and to render strict obedience to our orders. Neutrals residing in the occupied territory are not entitled to claim different treatment, in general, from that accorded natives, and may be punished for offenses to the same extent as enemy subjects.

"In conclusion, the policies which govern the conduct of military government by American forces emphasize military necessity, the welfare of the governed, flexibility, economy of effort and permanence of personnel during the period of occupation. It is sound policy to conduct civil affairs in accordance with the principles of justice, honor and humanity. While conditions will vary, it is a good general rule that can be expressed in the initial proclamation of the military governor, that so long as the inhabitants remain peaceable and comply with the orders, they should be subjected to no greater interference with their persons or property than may be inevitable in view of military exigencies, and that they should go about their normal vocations without fear. The exceptions, of course, are in the cases of those international criminals who have already been indicted at the bar of world justice and whose due and just punishment will constitute one of the greatest contributions to international jurisprudence that the world has known."

Assembly Is Addressed by Judge Advocate General Cramer of the Army

President Morris announced that when former Judge Robert P. Patterson, the Under Secretary of War, accepted the Association's invitation for this occasion, he announced the *caveat:* "If I am in the country." Absence in the Southwest Pacific kept this distinguished lawyer-soldier from this meeting.

In his place came Major General Myron C. Cramer, The Judge Advocate General of the Army, a member of the New York Bar, a former teacher of law, and a most friendly sponsor of the legal assistance which American lawyers are giving to the armed forces, under the leadership of the American Bar Association. The address of Major General Cramer will be published in full in a subsequent issue.

The concluding event of this evening session of the Assembly was the presentation of an Army motion picture, "Military Justice and the Court Martial Procedure." It was introduced and commented on by Major General Cramer. It showed graphically the lawyers' part in military justice.

Assembly—Third Session

Preliminary to the Wednesday morning convocation of the Assembly, the second annual meeting of the American Bar Association Endowment corporation was conducted. The delegate from the Canadian Bar Association, Mr. Justice C. Campbell McLaurin, of Alberta, gave a stirring message from Canada and its lawyers, with an absorbing account of his recent visit to the American forces in Northwest Canada and Alaska. For a wartime meeting of lawyers, it was a most appropriate address. The several amendments of the Association's Constitution and By-laws were adopted by the Assembly, without debate or division, in the form in which they had been adopted by the House. The 1943 Ross Essay Prize of $3,000 was presented to Mr. Lester B. Orfield, of Kansas City; the subject for the 1944 competition was announced, in the field of the administration of international justice. The concluding event of the session was the appropriate bestowal of the American Bar Association Medal to Judge John J. Parker, of North Carolina, who made a moving response.

THE third session of the Assembly was convened Wednesday morning. The transaction of its business gave way for a while to the second annual meeting of the American Bar Association Endowment, a corporation of which all members of the Association are automatically the voting members.

President Jacob M. Lashly, of the Endowment, called the corporate meeting to order. "The Endowment is a plan conceived by some of the gentlemen with long vision," said he, "in the hope and desire that an endowment fund can be accumulated which can be used by the Association to further objectives of the public desire and progress.

"It is always a struggle for the Association, as you know, to keep up the necessary operating machinery with current funds. That is so because our work is evangelistic in some respects—it ought to be perhaps even more—and unless we are running close to the borderline of a deficit, or except that we actually are doing deficit work in financing, there is a certain lag in the industry and devotion of the members. When we get our backs to the wall and our shoulders to the wheel, we work harder and carry out the objectives and ideals of the organized Bar better than we do in a smug and comfortable economic situation. So we never have anything left over in our budget planning, above the needs of operation. We are always a little behind what we would like to do. So the plan was to try to build up an endowment fund, which would enable the Association to do some of the finer cultural things that lawyers would like to have done through the integrated power of the organized Bar.

Members Should Keep the Endowment in Mind

"This idea of the Endowment was adopted, and an endowment organization was formed and incorporated under Illinois law. Invitations now are open to members of the Bar to remember the Endowment in wills and codicils and otherwise as the spirit moves lawyers, men and women and friends of the objectives of the organized Bar, to make provision for the carrying on of these objectives and this work."

Mr. Howard Barkdull, of Ohio, was renominated and reelected as a member of the Board of Directors of the Endowment corporation, the meeting of which was then adjourned. President Morris resumed the business of the Assembly.

Address by Mr. Justice McLaurin of the Canadian Bar Association

The representative of the Canadian Bar Association at this meeting, Mr. Justice C. Campbell McLaurin, of the Province of Alberta, was presented to the Assembly. After expressing cordial appreciation of the hospitality extended to Mrs. McLaurin and himself in Chicago, and paying tribute, in behalf of the Canadian profession, to the memory of Dean John H. Wigmore, Mr. Justice McLaurin spoke informally in part as follows:

"I bring greetings from the Canadian profession, and personal remembrances, Mr. President, from those distinguished Canadians who in other years have preceded me and enjoyed your fraternal hospitality. It is not too widely known even in Canada that the Canadian Bar Association had its origin in a meeting of the American Bar Association in Montreal in 1913. I am unaware of the circumstances which prompted that pilgrimage beyond your jurisdiction, but it was a friendly gesture to a smaller northern neighbor, and now stands as just one of the many efforts made by your great Association to bring about solidarity on this continent."

Chronicle of a Visit to American Troops in Northwest Canada

The speaker said that in preparing for his talk before "friends" in this Association, he determined that he "would not attempt to emulate American scholarship in the field of jurisprudence." So he decided to make and tell of a visit to the American forces in Northwest Canada. "I cannot tell you the numbers," he reminded. "I don't even know the numbers of Americans who are in the Northwest toward Alaska, but their number is substantial, and I thought that it would be not only my duty but my pleasure to visit them and bring you a message from your folks who are sojourning with us.

"It is not open to everyone to travel in that area at the present time, but when I acquainted the Canadian authorities with my intention to come here and fraternize with my American confreres, I received the necessary permission promptly by telegram. So, at the courtesy of the Canadian-Pacific Airlines, pioneering northern aviation, and the Air Transport Command of the United States Army, I proceeded northward from Edmonton.

Edmonton is the capital of the Province of Alberta, a little city of probably a hundred thousand people, a kind of hub or starting point for air activities northwards. I proceeded down the Mackenzie River by air to its mouth at the Arctic Ocean. Returning from that trip I then took a ride with the Air Transport Command, virtually flying box cars. They are more careful of the freight than they are of the human passengers. I proceeded as far as Fairbanks, Alaska. I also had the pleasure of making a little side trip from Whitehorse, Yukon, along the famous trail of '98 to Dawson City.

American Troops and Services Were Everywhere

"I found your services everywhere, literally everywhere, battalions of Engineers and Air Force and other services, and I do not think that history can record under quite similar circumstances such a friendly invasion."

Mr. Justice McLaurin brought back to mind that "In the year 1789 your great Constitutional Convention was bearing fruit. Public-spirited men, led largely by lawyers, had created a Constitution and had secured its endorsation by the necessary number of states. In that very year, and whilst Mr. Washington was being sworn in as the first President of the United States, on a bright April morning in New York, an intrepid Scotch fur trader by the name of Alexander Mackenzie was initiating at Lake Athabaska, in now far-northern Alberta, his preparations for the exploration of the river that preserves his memory. Little did Mr. Washington know in that summer of 1789, weighted down with the anxieties of the Federation, that another bold spirit was breaking ground in the far North, where today the youth of your nation grown great have followed in pursuit of the interests of democracy.

"The Mississippi River is very similar to the Mackenzie. In flying over it, again and again I was reminded of the Mississippi, even to its delta at New Orleans.

Origins of the Highway to Alaska

"Petroleum had been noted on the banks of the Mackenzie River at a point about seventy miles from the Arctic Ocean by Mackenzie. Following the last war, Canadian flyers broke into the north country and wrote a memorable picture in bush flying. They used pontoons in summer and skis in winter, which required fuel; and one or two small oil wells were drilled at a point on the Mackenzie called Norman Wells. Then in December of 1941, with the perfidious attack on Pearl Harbor, everyone on this continent awoke with a shock to the strategic importance of neglected Alaska. In February of 1942 (the American Army acted promptly), a highway to Alaska by land was projected; and the line selected is that one which is based really in Edmonton, Alberta. The construction of the highway being undertaken, the importance of the Mackenzie River oil was realized. The feasibility of laying a pipeline from Norman Wells to Whitehorse, a point on the Alaska Highway, over an unexplored wilderness of mesquite and turbulent streams and forest and mountain passes, was endorsed.

"All along this line you find the services of the American government, and I am told that the Canol project is comparable in its magnitude to the Alaska Highway itself, and that the two put together are an enterprise analogous to the construction of the Panama Canal. Between Edmonton and Norman Wells, a distance of fifteen hundred miles, airports have been torn out of the wilderness. United States engineers own a whole fleet of sturdy boats, to push scows loaded with pipeline material along the route that Mackenzie discovered; and you see an endless flight of ships of the American Air Transport Command, flitting back and forth from the Land of the Midnight Sun. Oil is now being recovered—I think it is no secret—in the Mackenzie Basin, in satisfactory quantities.

"The river at Norman Wells is about five miles wide. A submerged pipeline carries the oil across the river to the little American village of Canol. Two or three thousand contractors, employees and soldiers are there; and a really good road is being constructed for this entire distance of five or six hundred miles.

Canada as Host to American Servicemen

"Edmonton is the host to thousands of American servicemen. The American uniform is many times more noticeable on the streets of Edmonton than that of the Canadian services. A railway stretches northwards from Edmonton about three hundred miles to Dawson Creek. It is at that point that the highway itself starts on its thread-like route to Whitehorse, in the Yukon, and from Whitehorse to Fairbanks. Along the route are conveniently placed modern airports, beautiful airports with six thousand foot runways, able to take any machine that may be obliged to travel it.

"It is along that route, as I can testify, that both your government and mine are making not only a contribution to our own safety, but are sending innumerable planes, already marked with the red star, to Russia.

"The road is not yet finished. Terrific obstacles have been confronted. Bridges went out in the spring. At Fort St. John, over the Peace River, which is a noble stream, near the commencement of the highway, it has been found necessary to build a really beautiful suspension bridge, not as big as the Golden Gate Bridge or the Huey Long Bridge, but nevertheless a very noble piece of engineering, and it was the only kind of a structure that would last and carry material along the road.

"The road also appeals to me from a military point of view. I emphasize that it is a military road. There are other military roads which occur to my mind—the Burma Road and the one through Iran to Russia. But I think this road, to you and to me, as lawyers, derives an added distinction from the fact that it

passes through the territories of two friendly countries daily paying respect to the common law.

Alaska Is the Gibraltar of America, the Sword Pointed Toward Japan

"Canada's commencement as a Dominion dates back to the year 1867. It was in that year that we got our written Constitution, the British North American Act. Prior to 1867 we went through some trying years in Canada, not unlike the years preceding your Constitutional Convention; but little did we know in Canada, little did the fathers of the Confederation know, that Mr. Seward by his 'folly' in 'gambling' $2,700,000 was giving Canada a very important and friendly neighbor on her northern frontier. So today it is not an exaggeration to say that the Gibraltar of America is to be found in Alaska, with the Aleutian sword stretching herself far out into the Pacific, pointing at the very heart of Japan.

"As a Canadian I may perhaps be permitted to tell you that we want to continue to persevere with you in such preparation as may be necessary, regardless of the cost, to bring about, and let us hope bring about quickly, the utter collapse of the unspeakable Japanese regimen. (Applause) With the report of the fall of Kiska, some of you may have noted that squadrons of the Royal Canadian Air Force are cooperating with your air units in the Aleutians, eager to join in the ultimate attack on Japan itself. (Applause)

Legal Problems Created by Your "Invasion of Canada"

"When I advised President Morris that I was going to talk on 'Highways,' with some insight he wrote me: 'Just how do you link up road-building with the administration of justice?' The two projects have created a problem.

"American troops in vast numbers have been invited into Canada, and it has been the contention of the American Military that they have acquired the status of extra-territoriality and that regardless of the crime that an American soldier might commit on the streets of Edmonton, even if he went so far as to murder the Chief Justice of our Court, the soldier must be tried by the American Military Courts.

"To one not versed in international law, that appears to Albertans as a rather surprising proposition. I am glad to testify that the troops have been singularly well behaved and orderly. They are fraternizing with Canadians, and there have been no acts of serious misconduct. But it was obvious that the question should be settled, to avoid any embarrassing circumstances in the case of something more serious; and, as you might expect in two countries who pay tribute to the rule of law, there was a reference to the Supreme Court of Canada. The Attorney General for Canada became the complete and absolute advocate for the American position. He advanced every argument that he could think of for the adoption of the position that American troops had acquired complete extraterritoriality. As to the contrary view, some of the provinces including Alberta took the opposite position; and the Supreme Court of Canada has handed down just recently an interesting decision, and, being just a mere trial judge, I can join with you in saying that, as appellate courts sometimes are, they were not entirely unanimous, and a little difficulty is encountered in finding out just what the judgment may be. (Laughter) I may say that they did not adopt the position taken by the American military authorities. They did, however, give them wide jurisdiction. I was particularly interested that again and again tribute was paid to that classic authority of your Chief Justice Marshall in the *Exchange* case. I think it was Lord Atkin, in the House of Lords, who said that it had illumined the pages of international jurisprudence.

Problems as to Wages and Prices

"Another question arose on the projects, of passing interest to lawyers. In Canada we introduced, before you did, a complete system of price ceilings, including wages. Numerous Canadians were hired by the American contracting firms. They were free to pay Americans such wages as they wished, but Canadians were bound by their price ceiling. The result was that in many camps you would find probably a Canadian working for $150 a month and right alongside of him, doing the same work, would be an American getting $250 a month. So the Canadians made an appeal to our Western War Labor Board, a federal agency headed by a Supreme Court Judge, which has jurisdiction in such matters. The Board, after consideration, unanimously refused to authorize an increase in wages of the Canadians. I think it is manifest that if they had done so it would have completely punctured our price ceiling.

Tribute to Canadian Financing in Wartime

"I hope you will pardon me as a Canadian for paying a little tribute to Canadian war financing. Its achievements are ascribable to the cooperative effort of Canadians, regardless of sharp political divergencies. Canada is the only country which has not accepted, has not found it necessary to accept, lend-lease assistance from the United States. You and we are the only two countries in the world now who pay cash on the barrel-head for everything we purchase somewhere else. (Applause) Ours is the only country now that has recognized without interruption all war debts incurred in World War I.

"Last year we made an outright gift of a billion dollars to Great Britain. This year our budget provides for a billion dollars worth of war supplies to United Nations that can use them and cannot pay for them.

"We have grappled with inflation by severe taxation and direct borrowing from the public. Bank borrowing which is purely inflationary has been kept to a minimum. The consequence is we have had no ap-

preciable increase in the cost of living, and it is gratifying for me, a Canadian, to assure you that you have a solvent northern partner. (Applause)

"In these sketchy remarks I have endeavored to give you just a glimpse of the Canadian scene, and to pay tribute to the American war effort in Northwest Canada, which to my mind is tangible proof of our mutual understanding and mutual trust."

The Assembly audience arose and applauded warmly this stirring and neighborly message from the representative of the Canadian Bar Association.

The Assembly Adopts Various Amendments of the Constitution and By-Laws

Chairman Crump of the House of Delegates reported to the Assembly that the House had adopted an amendment of Article IX, Section 1, of the Association's Constitution, to change the name of the Section of Commercial Law to that of the Section of Corporation, Banking and Mercantile Law, and various other amendments of the Constitution and By-laws. President Morris pointed out that the consideration of these amendments was before the Assembly as a body of coordinate authority, and not as a matter of concurrence in or rejection of the action of the House thereon. Chairman Crump agreed.

The amendment to change the name of the Section of Commercial Law was taken up, was duly adopted by the Assembly and thereby was made effective. The formal text of this and the other amendments appears in the account of the proceedings of the House, and so it is not repeated here.

The minor amendment of Article I, Section 4, of the By-laws, as to sustaining memberships, was likewise adopted also by the Assembly, and thereby was made effective.

The amendment of Article I, Section 2, of the By-laws, in the form adopted by the House, whereby four instead of two negative votes would be required for the rejection of an applicant for membership who had been approved by a majority of the Admissions Committee of his State, was adopted by the Assembly, without debate or division, and thereby was made effective.

HONORABLE JOHN J. PARKER

Ross Essay Prize Is Presented and the 1944 Subject Is Announced

President Morris then presented the certificate of the Ross Essay Prize award, and a check for $3,000 to Mr. Lester Bernhardt Orfield, now vice chairman of the Regional War Labor Board at Kansas City, Missouri. The subject for the 1943 discussion, under the bequest made by the late Judge Erskine M. Ross, of California was: "What Should Be the Function of the States in Our System of Government?"

Professor Orfield then gave a summary of his essay, which was published in full in the JOURNAL for September.

Announcement was made that the subject for the 1944 competition under the Ross Bequest will be—

"What Instrumentality for the Administration of International Justice Will Most Effectively Promote the Establishment and Maintenance of International Law and Order."

American Bar Association Medal Is Presented to Judge John J. Parker

The bestowal of an American Bar Association Medal was the concluding event of the morning. For that purpose, President Morris called to the platform Mr. Arthur T. Vanderbilt, of New Jersey, a former President of the Association.

"Once a year the American Bar Association, after solemn deliberation of its Board of Governors," said Mr. Vanderbilt, "customarily awards its medal for distinguished service to some outstanding figure in the legal firmament.

"Sometimes the medal will go to a distinguished jurist such as Mr. Justice Holmes or Chief Justice Hughes; sometimes to a pioneering professor of law like Dean Pound, Dean Wigmore or Professor Williston; sometimes to a zealous missionary in the cause of law reform such as Elihu Root, George W. Wickersham, George Wharton Pepper, Edgar Bronson Tolman, or Herbert Harley.

"The distinguished Senior Judge of the United States Circuit Court of Appeals for the Fourth Circuit is known to lawyers throughout the country as the guiding spirit of the several advisory committees that brought forward a practical program

for improving the administration of justice, a program that five years ago was unanimously adopted by our House of Delegates. Not content with merely presenting the program, he has for years served as chairman of the special committee of this Association, advocating this program to judges and lawyers the country over, by correspondence, by conferences and by speeches in probably every state of the Union with results undreamed of by most of his associates.

Judge Parker's Practical Services Are Recounted

"More than any other judge in the United States he has sensed that the work of bringing our judicial methods in line with the needs of the times must be the joint enterprise of judges and lawyers. As far back as 1931 he instituted the Judicial Conference for the Fourth Circuit at Asheville. There once a year federal judges and representatives of the Bar meet for a frank and informal discussion of their common problems. The success of this gathering has led to the establishment by statute of similar conferences in each federal circuit.

"He has never forgotten that courts exist primarily to satisfy the needs of litigants. He has expedited decisions. He has reduced the cost of litigation. He was one of the draftsmen of the Act creating the Administrative Office of the United States Courts. He has been a zealous advocate of the wise use of the rule-making power. In all of these enterprises he has, with the modesty of a true gentleman, seemed to be but presenting ideas which all of the judges and lawyers had always known and accepted, but which somehow they had never quite come to the point of putting into action.

Tribute to the Court Over Which Judge Parker Presides

"No lawyer who has ever appeared in his court will forget the experience—a court in which all three judges have read the briefs in advance and so know what the issues are; a court which gives counsel a fair chance to state his case and then by straightforward but firm questions seeks to prove the soundness of his position; a court which never fails to extend the time for argument if the argument merits it; a court where the judges, once the argument is over, step down from the bench to shake hands with counsel and to chat for a minute or two, before going on with the next case; a most delightful court in which to argue, if counsel is well prepared and especially so, if he is on the right side. Would that every appellate judge in the United States might have an opportunity to spend a full day in the Fourth Circuit Court of Appeals!

"Judge Parker, by your high character and your true modesty, by your lofty judicial standards and your interest in the common problems of your fellowmen, by your courage and your tenacity in urging the American Bench and Bar to do their manifest duty in improving the administration of justice, by your example as well as by your precept, you have endeared yourself to American judges and lawyers throughout this country. It is my great pleasure on behalf of this gathering to present to you the American Bar Association Medal."

The Assembly audience arose and applauded as Judge Parker came forward to receive this signal recognition.

Judge Parker Speaks Movingly in Response

Judge Parker was presented to the Assembly by President Morris.

"I thank you for the great honor," he said, "and I thank Mr. Vanderbilt for his gracious speech of presentation. However unworthy I may feel of the fine things that he has said of me, I cannot but be gratified to hear them from one whom I esteem as highly as I do him.

"I am deeply moved by this honor. There is no body of men whose good opinion I value more highly than I do that of the members of this Association; and there is no cause in which I had rather be thought to have rendered worthwhile service than the cause of bettering the administration of justice. (Applause) To be honored by you, my friends of the Association, for such service as I have been able to render to the cause that is so near to my heart, stirs me to the very depths of my being. I have no language in which I can adequately express the real measure of my gratitude and appreciation.

"I am deeply conscious, Mr. President, that only in a representative capacity can I properly accept the honor that you do me. The improvement of the administration of justice is an enterprise which has enlisted the enthusiastic efforts of literally hundreds of the leading members of the Bench and Bar of our country; and what I have done would have amounted to nothing had I not had at all times the loyal cooperation and support of these my fellow workers. I feel that this award is intended as a recognition of their work as well as of mine; and it is in this spirit that I accept it, thanking you, not alone for the honor accorded us, but also for the recognition given to the great movement in which we are so deeply concerned."

The third session of the Assembly was thereupon adjourned at 11:40 o'clock.

Assembly—Fourth Session

A large and interested audience greeted distinguished speakers, at the Wednesday evening session under the auspices of the Assembly. Associate Justice Wiley B. Rutledge, of the Supreme Court of the United States, spoke earnestly concerning the post-war cooperation and organization of the nations to preserve peace and justice. This was fittingly followed by the eloquent address of the Attorney General of England, Sir Donald Bradley Somervell, who won and held the affectionate respect of all who came to know him during this Annual Meeting. It was a distinguished occasion, in keeping with the high traditions of the Association as to its evening assemblages.

THE fourth convocation of the Assembly was its second evening session at this Annual Meeting. The large audience which had come together to hear the distinguished speakers sang first "The Star Spangled Banner" and then "God Save the King."

Before introducing the first speaker, President Morris referred to the history and significance of the gavel, purchased in 1878, which has ever since been emblematic of the leadership of the American Bar Association. "You would think, Sir Donald," he said, "that in as orderly and well-behaved a group as this, a mallet of the dimensions, weight, and good hard wood, of this gavel, would show little signs of wear. But upon examination of the striking ends of this mallet you would find there must have been occasions, in the history of this Association, when the presiding officer, if he didn't demolish the desk upon which he hammered the mallet, must have come very near doing so in order to get order.

"The survival feature of this instrument, which is symbolic of parliamentary order, includes an interesting bit at the handle end. 'These bands of virgin Colorado silver were placed hereon by the Colorado Bar Association to commemorate the first Denver meeting in 1901.' As early as 1901, some twenty-three years after the founding of the organization, the members were beginning to look back upon their past with some pride.

"Then we have a center band: 'At the fiftieth meeting of this Association, 1927, this band made of gold from Clear Creek, where Jackson made the first discovery of gold in the Pike's Peak region, now Colorado, was presented by the Colorado Bar Association to commemorate the second Denver meeting in 1926.'

"Along both edges are the names of the men who wielded this gavel as the presiding officers of the American Bar Association. There are great names in that list. There is here the name of a President of the United States; there are here the names of at least two of our Chief Justices; there are names here of Ambassadors, of Senators, of Cabinet Officers, and of outstanding lawyers in their day. There are names here of other men whose devotion to this Association, whose services for it have yielded some of the greatest satisfaction of their lives. And we cherish that.

"It isn't so old—it isn't old at all compared to the things that you have in your country, Sir Donald; but it is old, and we have a great reverence for it in such a young country as ours." (Applause)

Mr. Justice Rutledge Speaks on Post-War Organization of the Nations

In introducing Mr. Justice Wiley B. Rutledge, an Associate Justice of the Supreme Court of the United States, President Morris referred to his "geographical" identification with many parts of the country and his characteristics as "a warmhearted man of intellectual power."

In his opening remarks, Mr. Justice Rutledge said, among other things, that "I think back to my first American Bar Association meeting, which was in Denver in 1926. Then I was a young lawyer in the University. Happier days and happier experiences I shall never have. It was for me a thrill to attend that meeting and to see in performance, for the first time, the leaders of the American Bar and the American Bench.

"Since that time we have witnessed many changes in the legal structure. But I like to recall that through most of them the country has survived; most have been improvements. We go on with change. What is new to one generation becomes old and accepted and traditional to another. The basic thing is that we retain a sufficient continuity as we change; that we not lose the sense of stability in our institutions; that we feel that the past is part of the present, the present part of the future.

"I shall never have the privilege of holding this gavel officially, but I envy the men who have had that privilege from year to year. I touch it now at my only opportunity, not only because of its peculiar association with Colorado, a state that I love, which started me on my legal career, but also because it embodies the symbolic structure of the highest and the best in the ideals of the legal profession of this country."

Mr. Justice Rutledge then delivered his prepared address, dealing with the post-war problems and structures of the nations. It was cordially applauded; it will be published in the November issue of the JOURNAL.

The Attorney General of England Addresses the Assembly

Felicitously introduced by President Morris, the Attorney General of England, Sir Donald Bradley Somervell, delighted and stirred the brilliant Assembly audience with an address which attested the strong bonds of kinship and cooperation between the English-speaking nations. His address is published elsewhere in this issue.

At 10:40 o'clock this session of the Assembly was adjourned. It was followed by the President's reception, an agreeable social occasion attended by many members of the Association and their wives.

Assembly—Fifth Session

The Thursday morning session of the Assembly was marked with lively interest. The awards of merit to state and local bar associations, for outstanding work during the year, were bestowed. A timely discussion of the participation of the United States in post-war planning for peace was presented by Congressman Fulbright and Senator Taft. The "open forum" to act on the numerous resolutions offered by individual members led to an animated debate on a resolution in favor of the outright out-lawing of strikes in war industries. The recommendation of the Resolutions Committee against its adoption was rejected by the Assembly on a close division; the resolution was passed. On unanimous recommendation of the Resolutions Committee, the Assembly declared it to be "the sense of this meeting that membership in the American Bar Association is not dependent upon race, creed or color." Steps were taken to insure study and action to oppose the establishment of group medical service under federal control. Immunity of the government from the costs of litigation was opposed. Gratitude to the hosts of the convention was enthusiastically voted. Several other resolutions were passed; some were not adopted.

THE fifth session of the Assembly was convened at 9:50 o'clock Thursday morning, again at the Hotel Knickerbocker, with President Morris in the Chair.

The report of the Board of Tellers as to the results of the balloting for the election of four Assembly Delegates was presented, as follows:

BRUCE W. SANBORN, of Minnesota	246 votes
JOHN M. SLATON, of Georgia	241 votes
CARL B. RIX, of Wisconsin	233 votes
ROBERT F. MAGUIRE, of Oregon	208 votes
SYLVESTER C. SMITH, JR., of New Jersey	187 votes
JOHN A. DIENNER, of Illinois	150 votes
ALBERT E. JENNER, JR., of Illinois	133 votes
JOSEPH D. CALHOUN, of Pennsylvania	127 votes
A. G. EWING, of Tennessee	103 votes

Messrs. Sanborn, Slaton, Rix and Maguire were declared elected for a two-year term.

Awards of Merit to State and Local Bar Associations

This report was presented by Ex-Governor John M. Slaton, of Georgia, who said in part:

"The Assemblies of the American Bar Association, the sessions of the House of Delegates, and the labors of the Board of Governors reveal in broad outline the achievements of the American Bar Association.

"They show the integrated efforts of its members to carry out the purposes of the organization of American lawyers to promote the administration of justice and to uphold the honor of the Profession of the Law. The great men of the world address us on subjects of interest to all mankind, and while keeping abreast with modern thought and new aspects of pertinent social conditions, novelty is subjected to searching criticism in order to prevent mere change from leading us into error.

"Yet the American Bar Association would be the more endeared to the general public if people generally realized the immense service of a quiet and unpretentious character rendered all over this country by the modest and unpaid lawyer, acting under the inspiration and encouragement of this Association.

"Such knowledge comes to your Committee on the Award of Merit. These awards are made to one state bar association, one to a larger local bar association, and one to a smaller local bar association for outstanding and constructive work during the last year.

"Emphasis is placed on efforts of the Bar toward the successful termination of the war.

"The greatest and foremost service is rendered by the soldier, who risks and yields his life for the preservation of this country. As one looks through the records of the applications where it is noted that achievements fall short of their ambition the reason is given that a large per cent of their members is in the Armed Forces in performance of the highest duty.

"The workman in the machine shop, forging the instrumentalities of war, is as essential as a soldier, and we find that lawyers, college-bred and accustomed to the pen rather than the lathe, leave their offices at nightfall to work in the factory until the early hours of the morning. The required supporting proof from the factory superintendent attests their diligence and efficiency.

"In one of the bar associations, one hundred members gave their blood for transfusion to the wounded soldiers who need it, and hold themselves ready for such similar donations when they should be asked.

"The aged parents, the wives and little ones of the men at the front would be left without advice and protection except for the lawyers, who quietly take their place without charge, and save their dear ones from unjust processes that deprive them of shelter, a stove, and a bed on which to sleep.

"These lawyers past the draft age and under the pension age aid the Red Cross campaigns, not only contributing, but presenting in forceful appeals the mission of 'The Lady of the Lamp.'

"These applications for the Award of Merit show the countless hours given cheerfully to the soldiers in regard to their allotments, their income taxes, and their wills, disposing of their little savings, and distributing their pictures and furniture in tender care to the beloved recipients.

"Such are the contributions of lawyers in states, counties, cities and villages throughout the nation. A great thinker said 'It is as well for us because of those who live modest lives and lie in obscure graves.'

"The genuine help of the quiet lawyer, working with the knowledge his labors are valued and appreciated by the American Bar Association,

constitutes an encouragement to the profession, and creates an endearing bond with the general public.

"No appraisal can be too high of what these applicants have done in a professional way. They have given their experience and intelligent efforts to render less expensive and more certain the administration of justice. They have opposed and defeated efforts to introduce partisanship and partiality in the selection of the judiciary. Their committees have watched proposed legislative enactments and have prevented their passage into law.

"Without recounting the reasons, which would be too detailed and voluminous, the Committee has instructed me to present the Award of Merit for the State Bar Association to the State Bar Association of California, and its president, Mr. Frank B. Belcher, will receive it.

"Honorable mention is given to the Bar Association of the State of Missouri.

"The successful applicant for the larger local bar association is given to that of the District of Columbia, and its president, Mr. Milton W. King, will receive it.

"And now the Award of Merit to the smaller local association. It represents the lawyer of the country or of the smaller communities, often the very best of the profession—guide, counselor and friend of his neighbors, whose knowledge of the law is based on enduring principle if not on changing precedents. One of the applicants of this class did not as much, but as faithful service, as their more pretentious city brothers but 'Small service is true service while it lasts.'

"As Carlyle said of Burns, 'While the Shakespeares and Miltons roll on like mighty rivers through the country of thought, this little Valclusa fountain will also arrest our eye and oft will the traveler turn aside to drink its clear waters and muse among its rocks and pines.'

"The Committee has chosen as the successful applicant of the smaller local associations the Bar Association of the County of Bergen, New Jersey, and its president, Mr. L. Stanley Ford, will receive the Award of Merit allotted to it."

Fulbright-Taft Debate as to the Fulbright Resolution

An event of absorbing interest was the Assembly's presentation of a virtual debate between Congressman James W. Fulbright and Senator Robert A. Taft, on the timely and vital subject-matter of the Fulbright Resolution (H.R. 25), now under active consideration in the Congress of the United States as a proposed declaration of the policy of the United States toward helping to preserve peace in the post-war world.

The first speaker was Congressman Fulbright, of Arkansas, formerly a lecturer in law at George Washington University and the University of Arkansas, of which he became president in 1939. Serving his first term in the Congress, he has attracted unusual attention as a lawyer and a leader of public opinion. His presentation, which was listened to with close interest and frequent applause, will be published in the November issue.

The second speaker in this significant discussion was Senator Robert A. Taft, of Ohio, who was admitted to the Bar in 1913, distinguished himself as a lawyer, was Speaker of the Ohio House of Representatives in 1926, and was elected to the Senate of the United States in 1939. His address elicited frequent applause; and will be published also in the November issue.

"The audience's reaction and the volume of the applause," declared President Morris, "should be adequate testimony to our appreciation of the brilliant addresses of the two speakers."

The "Open Forum" Acts on Resolutions Offered from the Floor

Chairman Crump of the House of Delegates reported that the House had thus far taken no action which required the action of the Assembly. The lively "open forum" session of the Assembly was next in order.

Chairman Homer S. Cummings of the Resolutions Committee reported that the Committee had held one open public hearing on the various resolutions and five executive sessions for considering them and preparing its report.

Concerning the first resolution introduced by Mr. Irving H. Flamm, of Illinois, Chairman Cummings reported:

"This resolution deals with international affairs, enunciates certain principles of post-war cooperation, deals with important matters of 'national sovereignty,' and concludes with a resolution that the Section of International and Comparative Law of the American Bar Association be directed to make a study of the international organizational structures best suited to achieve the purposes set forth.

"Your Committee, therefore, recommends that this resolution be referred to the Section of International and Comparative Law for its consideration. We are especially moved to make this recommendation in view of the action already taken on this subject by the House of Delegates at its March meeting."

The resolution was as follows:

"WHEREAS, Our nation has been drawn into a world war for the second time within our generation, a war which will involve the loss and crippling of countless millions of lives, the destruction of cities and the saddling of burdensome debts upon the peoples of the earth;

"AND WHEREAS, The approach of victory in this war imposes upon us the obligation to prepare promptly for the peace to follow, and to work together with our allies while we are still united in order to avoid a repetition of the mistakes following our last victory when secret alliances and power politics were resorted to instead of an open international union based on law and order;

"AND WHEREAS, It is peculiarly within the province of lawyers to devise the framework for social institutions based upon the rule of law rather than the rule of might; and it is, therefore, fitting and

proper that the legal profession take the lead in the task of organizing an international union based upon law, with adequate machinery to arbitrate or adjudicate international disputes, now, therefore,

"BE IT RESOLVED, That the American Bar Association endorses the following declarations:

"(1) It is now clear that war can be started by any nation, but peace can be maintained only by the united action of nations. The outbreak of the present world war is the culmination of a series of aggressions commenced by Japan and then followed by Italy and Germany, each encouraged to continue in its ruthless course by the non-interference of the powerful nations of the earth. The big nations could easily have halted the aggressors at the very outset through the mere use of economic sanctions, but because they were disunited, each concerned only with its own immediate national interest, the aggressors became bolder, picking off weaker nations, one at a time, each conquest strengthening them for the next aggression.

"(2) The events of the past have demonstrated that a policy of isolationism is no longer a safe refuge for any nation; that when wars break out, no land can long remain an island of safety. Technological advances have transformed the world into an interdependent community of nations in which none can be insulated against the air waves, flying machines and international trade. The fruits of modern science must be used to promote either friendly intercourse between nations or international wars, and each successive war will be more brutal and destructive than the last and affect more and more of the civilian populations of the earth.

"(3) Society has long ago learned to provide machinery for preventing wars of violence between individuals, between cities and between states. The United States of America, a union of 'sovereign states,' has already demonstrated the many advantages to be gained by international collaboration. The peoples of New York and Texas or those of Minnesota and Alabama are no closer and no more alike than those in the various nations of the earth except in so far as the people within the widely scattered parts of our land have been molded together by an 'international union' organized for their common interest. The time has come when this molding process must be applied throughout the world—a world shrunk by science to the size of a community smaller than our original thirteen colonies. Those colonies, too, were settled by peoples of different ethnic origins, different languages, different religions and different cultural traditions. Through *our* 'international union' we have brought about a high degree of cooperation and prosperity among them. Our progress has been checked by the foreign wars in which we are inevitably embroiled and by the ever-increasing debts incurred to pay for those wars. An ever-growing portion of the world's energy is being devoted to the socially wasteful job of producing more and more armaments and devising ways and means for their effective use. These armament races have made us all jittery and insecure. And to aggravate this condition, we are now teaching the backward peoples in colonial territories the art of mass production and use of armaments. These exploited people, forming most of the world's population will be an added threat to our security unless we organize the world for peace.

"(4) The objection that 'national sovereignty' will have to be surrendered to a world union, if organized, is not a valid objection. In the final analysis sovereignty rests with the *people;* and governmental organizations, whether they are called city, state, national or international, are set up for the benefit of the people and not for the inanimate territories in which they happen to reside at any given period. Just as our sovereign state governments need not unreasonably interfere with sovereign cities, nor our federal government with sovereign states, so we can superimpose a world government, with limited powers, which will not unreasonably interfere with the sovereignty of nations. A resident of Chicago can be a good citizen serving with equal loyalty his city, his state and his nation; and, if it be organized as a body politic, he can also serve the human race with like loyalty. Functional necessity will dictate the precise jurisdictions of each area of government. Nor will it be necessary to maintain large international standing armies to prevent wars. In this interdependent age with its interwoven economic strands, the mere threat of economic sanctions will be sufficient to discourage potential aggressors.

"BE IT FURTHER RESOLVED, That to give effect to the foregoing declarations, the American Bar Association endorses the following:

"(1) The establishment of an international union of nations, patterned, as far as may be feasible, after our own union of states and consistent as far as possible with the principles of the Atlantic Charter. The peoples of each nation shall be expected to delegate to said union only the limited powers required to achieve the following purposes:

"(a) To prevent international aggression and the use of force by any nation against another.

"(b) To provide for an international council empowered to formulate an international code of laws which will require open, just and honorable conduct between nations.

"(c) To provide machinery for the conciliation or arbitration of international disputes; and for a court to adjudicate those international disputes which cannot be effectively conciliated or arbitrated.

"(d) To provide for machinery to enforce by military or economic sanctions, or both, the judgments of the international court.

"(e) To provide for the reduction and gradual elimination of armaments within nations except to the extent required to maintain internal order.

"(2) All member nations of the

United Nations and all neutral nations shall be eligible for membership in said international union. Enemy nations shall become eligible after they have surrendered, evacuated all occupied territory, overthrown their Fascist dictators and set up new governments, representative in form.

"(3) The United Nations are hereby urged to issue a call for an international constitutional convention to be held in North America at the earliest opportunity, and for the purpose of promoting the organization of such world union, formulating a constitution and an international bill of rights.

"(4) Each nation shall elect or appoint according to its laws, the delegates who will represent it. The election or appointment of delegates to said convention shall not be deemed to constitute acceptance of membership in the proposed union; nor shall the acts or decisions of said delegates bind any nation until ratified by the appropriate body of said nation.

"BE IT FURTHER RESOLVED, That the Section of International and Comparative Law of the American Bar Association be directed to make a study of the international organizational structures best suited to achieve the purposes hereinabove set forth, and to report thereon at the earliest possible opportunity."

Chairman Cummings' motion for a reference of the resolution to the Section was adopted by the Assembly, without debate.

Resolution in Favor of Outlawing Strikes in War Industries Is Reported On

The next resolution had been offered by Mr. Louis S. Cohane, of Michigan, whose resolution on the same subject was not adopted a year ago. Mr. Cohane's present resolution was as follows:

RESOLVED, By the American Bar Association in annual convention assembled, as follows:

(1) That strikes in war industries be immediately outlawed and are completely indefensible.

(2) That it is an unalterable principle of the self-preservation of our nation in wartime that when there are differences between Capital and Labor a strike is not a solution.

(3) That it is the solemn and sacred duty and obligation of the President of the United States and of the Congress as well as all of our people to immediately promulgate into law and into effective Presidential Order a solemn pronouncement and directive that strikes in war industries will result in effective corrective steps including the immediate prosecution of those engaged therein.

Chairman Cummings stated that "Your Committee recommends that the resolution be not adopted, for the following reasons:

"(a) The Association has already taken a decisive stand upon the subject-matter in its approval of the report of the Committee on Labor, Employment and Social Security (See Annual Report of 1942, page 95).

"(b) While certain disturbing occurrences have since taken place in the labor field, at the same time it must be remembered that Congress has sought to deal with the matter by the passage of the Smith-Connally Act, under which Act certain prosecutions have been instituted and are now pending in the courts.

"(c) Under these circumstances, the Committee feels that affirmative action by the Association would be premature and ill-advised."

Mr. Cohane Opposes the Committee's Recommendation

The motion that the resolution be not adopted was seconded. Mr. Cohane argued vigorously that the Assembly adopt his resolution instead. "We dare not temporize longer on this issue," he said, in part, "and dare not try to evade or avoid it. If the Association wants to help win the war, this action is a vital part of what we can do. The Bar has a responsibility for leadership.

"We are fighting for our lives, against enemies abroad and against strikes at home. We must outlaw strikes which keep planes, tanks, guns, ships, food, transport, away from our men who suffer and lose their lives for lack of them. The fundamental principle is that for the duration of the emergency the peacetime right to strike is gone."

Mr. Charles M. Hay Counsels Moderation as to Labor Problems

State Delegate Charles M. Hay, of Missouri, thought Mr. Cohane's resolution should not pass. "I am not going to make a speech, believe it or not," he said. "I am determined to sit through the various sessions without making a speech. I have been importuned by numerous people to make a speech. A gentleman asserted to me that this convention will be a complete failure and a haunting memory if I do not make a speech. (Laughter)

"The reason I arose is simply this: At the Detroit meeting I spoke with some fervor, as some of you may recall, against the resolution of a similar nature which Mr. Cohane offered at that time. He made the statement today that a gentleman who had opposed his resolution last year had had a change of heart and also heart failure, and was now favoring his resolution. I was fearful that some of you might think I was that man (laughter) and that I had had a change of heart and that I was at the present moment suffering with some heart disturbance.

"There is nothing the matter with my heart nor with my head. No, I have not changed my view. The resolution which the gentleman has offered this time is not, shall I say, as inflammatory as the resolution before; but in my judgment the reasons which the Committee has advanced for declining to recommend the resolution are sound.

"I want again to express the thought which I expressed in Detroit last year, that despite the disturbances here and there and the loss of some time, a small amount of time, as a result of strikes, the over-all picture is not bad. While there are those in the ranks of labor who are wrong and resort to strikes here and there and lose some time, the great majority are right. I frankly think that the adoption of this resolution at this time would make no contribution to the allaying of difficulties; that we

would better let the resolutions heretofore adopted stand as our expression; that the action of Congress be accepted to be worked out, and go forward with some gratification that after all we are moving forward in a magnificent way in this country—management and labor, young and old—to a great, triumphant victory."

Mr. Cohane claimed the right to close the debate. President Morris thought the right to close, on the Committee's motion, belonged to the Chairman of the Resolutions Committee. On reference to the Association's organic law, Mr. Cohane was accorded the closing.

Mr. Cohane's Resolution Is Adopted by a Close Vote in the Assembly

On Chairman Cummings' motion that the resolution be not adopted, a rising vote was first counted as 116 for and 116 against the motion. Other members evidently came in to vote on a second count by the tellers. The result was announced as 114 votes for, and 129 against, the Committee's motion, which was thereby lost.

Former President Walter P. Armstrong made a parliamentary inquiry whether the Assembly had thereby adopted Mr. Cohane's resolution. The latter was then put to a vote and was carried, without a call for a rising vote.

Mr. Gresham's Resolution as to Rules of Procedure Is Defeated

Chairman Cummings reported next on the renewal, by Mr. Otto Gresham, of Illinois, of a lengthy resolution which he had offered, without success, two years ago (for its text see 1941 Annual Report Volume (No. 66), pages 113-116.) The Committee said that—

"This resolution challenges the constitutionality of the Act of June 19, 1934, under which the new Rules of Civil Procedure were promulgated, and seeks to require the Bill of Rights Committee to act on the matter. Your Committee recommends that the resolution be not adopted."

After Mr. Gresham had stated his reasons for wishing to have the constitutionality of the Act and the validity of the Rules determined, Chairman Cummings' motion that the resolution be not adopted was put to a vote and was carried by the Assembly.

Resolution Declaring the Sense of This Meeting on Admissions to Membership Is Adopted

Chairman Cummings next reported that the Resolutions Committee "gave consideration to a resolution introduced by Mr. Joseph C. Thomson, of New York. This resolution deals with race discrimination as affecting membership in this Association. The resolution as written imposes, or seems to impose, membership requirements or even membership restrictions in addition to those set forth in the Constitution and By-laws. It would seem, therefore, that any such proposal, in order to be effective, would have to be put forward as a proposed amendment either to the Constitution or the By-laws, or both, and would have to follow the usual routine. For this reason, your Committee recommends that the resolution be not adopted.

"Moreover, your Committee calls attention to the fact that there is nothing in the organic law of the Association which prescribes any test for membership by reason of race, creed or color. This, we understand, is in accord with the view of the Board of Governors.

"With the thought that action at this meeting would fortify this position," the Committee recommended the passage of the following substitute resolution:

> RESOLVED, That it is the sense of this meeting that membership in the American Bar Association is not dependent upon race, creed or color.

In connection with this report and recommendation, Chairman Cummings said that "All of these resolutions from beginning to end were the result of unanimous action by the Committee on Resolutions." (Applause)

Mr. Thomson, of New York, as the mover of the original resolution, expressed his view "that the substitute resolution will accomplish in substance the same result." He favored the substitute, and urged that some such declaration be made.

The substitute resolution offered by the Committee was put to a vote. Amid applause it was adopted by the Assembly, without a division.

Resolution of Thanks to the Brazilian Bar Association Is Voted

The appreciative resolution offered by Mr. William Roy Vallance, of the District of Columbia, was reported favorably by the Resolutions Committee in the following form:

> RESOLVED, That the American Bar Association expresses to the Brazilian Bar Association its appreciation for the many courtesies extended to its delegates to the Second Conference of the Inter-American Bar Association, held in Rio de Janeiro, August 7-12, 1943, on the 100th anniversary of the founding of the Brazilian Bar Asso-tion and congratulates the Brazilian Bar Association on the success of the conference.

The motion to adopt the resolution was unanimously carried, after President Morris had expressed his personal appreciation of Brazilian hospitality.

Resolution Against Immunity of the Government from Costs Is Approved

Chairman Cummings of the Resolutions Committee next reported to the Assembly the consideration of a resolution and an alternative resolution, each offered by Mr. Murray Seasongood, of Ohio. The Committee recommended and moved the adoption of the alternative resolution, as follows:

> RESOLVED, That it is the sense of the American Bar Association that general immunity of the government from the payment of costs works injustice and that, except in strictly criminal prosecutions, costs should be allowed as of course, including costs against the United States, its officers and agencies, to the prevailing party, unless the Court, for good cause shown, otherwise directs.
>
> RESOLVED, Further that this Association sponsor legislation and changes in the Federal Rules to effectuate the purposes of this resolution.

After Mr. Seasongood had explained the reasons for his resolution, it was adopted by the Assembly.

A resolution offered by Mr. Will Shafroth, of the District of Columbia, sought to direct the AMERICAN BAR ASSOCIATION JOURNAL to republish, from the current *Readers Digest*, an article entitled "Don't Blame the Bureaucrats," written by Chairman Hatton W. Sumners, of the Committee on the Judiciary, in the National House of Representatives. The Committee recommended and moved instead that the matter of its republication "be referred to the Editors of the AMERICAN BAR ASSOCIATION JOURNAL for their consideration." This motion to refer was adopted by the Assembly.

Resolution Against Group Medical Service Under Federal Control Is Debated

Concerning a resolution offered by Mr. Loyd Wright, of California, Chairman Cummings reported as follows:

"This resolution is in criticism of and opposes the adoption of Senate Bill No. 1161, which establishes, under the direction of the Surgeon General, a system of group medical service.

"In the absence of careful analysis and complete information, any action upon it at this meeting, either favorable or unfavorable, would, of necessity, be premature and unwise.

"We, therefore, recommend that the resolution be referred to the Board of Governors for its consideration and such action as it may see fit to take."

Chairman Cummings made a motion to carry out the recommendations of the Committee.

"I do not believe it is ever premature," declared Mr. Wright, "for the American lawyer to voice his objection to regimentation of a brother profession. I do not wish to pursue this resolution if I may be assured that it will receive proper study in the interim between this meeting and the March meeting, and if found to contain those things which I think it contains, that is, state medicine, regimentation of the medical profession and hospitals of this country, to bring about a situation where one man can tell you what doctor will operate on your loved ones—I say that if it is found to contain those possibilities, we lawyers should hearken to the advice that our President and distinguished leaders of the American Bar have given us.

"Furthermore, I think it contains the most excellent opportunity for public relations that the American Bar Association has ever had. If it be true that this is a step toward state medicine, toward regimentation of the medical profession and the hospitals, what better public relations program, in addition to our voicing our defense of the public, could we have than to come to the aid of the great medical profession.

"I should like to propose a substitute, and that is that if the Board of Governors or a special committee appointed by the Board should find that this bill makes it possible to have state medicine or to place a substantial control over all hospitals and all doctors in this country, the Board, without awaiting a further meeting of the American Bar Association, the Assembly, or House of Delegates, should publicly announce its protest to the bill and fight against its passage." (Applause)

Reference to the Board of Governors and the House for Action Is Accepted

President Morris suggested to Mr. Wright that the advisable procedure might be to accept the report of the Resolutions Committee and refer the matter to the Board of Governors and the House of Delegates, and then have the House, if it sees fit, create a committee to deal with the subject.

That was "quite agreeable" to Mr. Wright. Chairman Cummings accepted the amendment for the joint reference. The motion of the Committee, with the amendment, was then adopted by the Assembly.

Concerning a resolution offered by Mr. George Washington Williams, of Maryland, the Resolutions Committee reported that "This resolution asks the American Bar Association to declare the proposed legislation abolishing poll taxes as unconstitutional.

"The Committee realizes the difficulty of determining in advance what is constitutional and what is unconstitutional. We recommend that the resolution be not adopted."

Chairman Cummings' motion to carry out the recommendation of the Committee was carried by the Assembly.

Expression of Appreciation to the Hosts of the Convention Is Voted

In concluding his report, Chairman Cummings said that "Your Committee feels that its report would not be complete without an expression of gratitude to our host associations." It recommended the adoption of the following resolution:

> RESOLVED, That the American Bar Association hereby expresses its heartfelt gratitude to the Chicago Bar Association and the Illinois State Bar Association for their helpful cooperation and the many courtesies extended during the past week—all of which were so freely tendered in spite of the chaotic conditions prevailing at this time.

President Morris said that "I am sure the resolution will meet with the unanimous acceptance of everyone in this audience and also the enthusiastic acceptance. Therefore, we shall assume that it is adopted with your applause." (Applause)

Mr. Joseph C. Thomson, of New York, moved that the Assembly direct the AMERICAN BAR ASSOCIATION JOURNAL to publish the addresses of Congressman Fulbright and Senator Taft, before the Assembly; also, the address of President Hutchins, of the University of Chicago. President Morris explained that the policy of the Association was to leave the selection of material to the Board of Editors of the JOURNAL, also, that "we are working with the government, under a restricted use of paper." Mr. Thomson's motion was defeated by the Assembly.

The fifth session of the Assembly was recessed at 12:40 o'clock.

Assembly—Sixth Session

This Annual Meeting was unusual in that its developments necessitated an unprecedented sixth session of the Assembly, late in the afternoon of the last day, with important business to transact against time. This situation was due to the fact that in the House of Delegates, its Chairman had sustained a point of order, by Judge Thompson, of Illinois, that Mr. Cohane's resolution in favor of the outlawing of strikes in war production industries was beyond the province of the Association. After debate, President Morris ruled in the Assembly that the resolution was within the province of the Association. No appeal was taken from either ruling. The Assembly voted to reaffirm its adherence to the resolution as passed by it. Suggestions of a referendum to the whole Association membership were objected to as too costly. The controversial resolution accordingly stood as the twice-voted expression of the opinion of the Assembly, without a vote thereon in the House of Delegates.

THE sixth and concluding session of the Assembly was called to order by President Morris at five o'clock on Thursday afternoon, the last day of this Annual Meeting, in the ballroom which the Drake Hotel forces were already waiting to clear for the Annual Dinner that evening.

Pursuant to Article IV, Section 2, of the Association's Constitution, the Secretary reported to the Assembly that the House had not adopted the resolution, offered by Mr. Louis S. Cohane, of Michigan, and passed by the Assembly, in favor of the outlawing of strikes in war production industries. The Chairman of the House was stated to have ruled the resolution out of order on objection by Judge Floyd E. Thompson, of Illinois, as beyond the province and objectives of the American Bar Association.

Mr. Cohane thereupon asked the President, as the presiding officer of the Assembly, to rule on the constitutional propriety of his resolution.

Mr. Cohane Argues That His Anti-Strike Resolution Is Germane

"The reason that the objection raised by Judge Floyd Thompson is not well-founded," said Mr. Cohane, "is this, that this is the self-same subject which has been dealt with by the House of Delegates' Committee on Labor, Employment and Social Security. I have here the volumes of the 1941 and 1942 Annual Reports, giving the reports of Judge Ransom, chairman of the Committee on Labor, Employment and Social Security, in which the report and recommendations of the Committee, as I recall it, were opposed to strikes except on certain conditions—that there be a cooling-off period, etc. This House of Delegates having, through its Committee on Labor, Employment and Social Security, dealt with this very subject over a period of years, and this body having adopted its recommendations with reference thereto, is in no position to say now that this is no part of the work of the American Bar Association or the House of Delegates."

Mr. Thompson, of Illinois, made the further point of order "that there is no difference in the action upon resolutions by the Assembly and by the House, and that therefore this is not properly before the Assembly to act upon."

The Parliamentary Status of The Resolution Is Debated

Rising in the Assembly to what he described as "a question of personal privilege," Chairman Crump of the House asserted that "the Assembly or its presiding officer has no right or authority to rule" as to whether or not the ruling of the presiding officer of the coordinate body was correct.

Mr. Avery, of Massachusetts, declared that "I voted against Mr. Cohane's resolution at the meeting of the Assembly, but I think that he hasn't been treated fairly, and I don't think that the members of the Assembly are treated fairly at this end of the day, to have their action disapproved of and laid on the table and interred in any such way as this."

Mr. John L. Vest, of Kentucky, suggested that the action of the House, through its Chairman, "is tantamount to a disapproval by the House." President Morris explained that Chairman Crump's position was that the resolution "was neither approved, disapproved or modified, by the House of Delegates." Mr. Wright, of California, asked if it was "possible for the Assembly to ask for a referendum," on the theory that the House had refused to approve the resolution. If so, I so move."

Mr. Samuel H. Liberman, of Missouri, declared that "If this is allowed to stand, it will indicate that it is within the power of the House to defeat any action taken by the Assembly, merely by declaring it out of order, when it comes before the House, because it is not within the purposes of the Association. It seems to me that the power exists in the Assembly to have the right eventually to pass upon this question, and that the President of this body has the power to determine for this body whether or not the resolution is within the purposes of the Association, and that appeal may be taken from his ruling and passed on by the entire Assembly."

Mr. Stanley Protests the "Absurd Situation"

Mr. W. E. Stanley, of Kansas, a member of the House, said that "this is an absurd situation." He thought that "the Assembly has a right to take action on whether it considers a question of this sort is beyond the province of the Association." It seemed to him that the House was "treating the Assembly inadvisedly, when we take action which restrains the consideration of a matter of this sort and leaves it grounded by merely a ruling of the Chairman unappealed from."

Mr. Cohane moved that the Assembly reaffirm its action in adopting the resolution. At the suggestion of Mr. Sidney Teiser, of Oregon, he added to his motion a

declaration that the Assembly considers such action to be within the powers and functions of the Association.

President Morris voiced the view that "the Assembly has the power to do whatever it wants that is within the scope of the Association." He ruled also that "if the House feels that it is not within the Association's powers, it has a right so to declare."

A Motion To Table the Resolution Is Defeated

Mr. Bernard J. Myers, of Pennsylvania, moved "that the whole matter be laid on the table." This was seconded, but was defeated by the Assembly.

Mr. Crump asked to have Mr. Cohane's motion divided. "I would vote in favor of the motion made by Mr. Cohane without the part tacked on by Mr. Teiser," he said.

Mr. Cohane accepted the suggestion, and renewed only his original motion to reaffirm the Assembly's adoption of his resolution.

Mr. Thompson, of Illinois, made here his point of order, which had been sustained by the Chairman of the House. Judge Frederic M. Miller, of Iowa, challenged this point of order.

President Morris Overrules the Point of Order

President Morris then overruled, in the Assembly, Judge Thompson's point of order. "The Chair rules," he said, "that the matter is within the scope of the Association because Mr. Cohane's first paragraph reads that strikes in war industries be immediately outlawed. When you begin to talk about things being outlawed, you are talking about the administration of justice. The administration of justice is a function of the Association. Does anyone care to appeal from the decision of the Chair?"

No appeal from the ruling of the President was taken.

Mr. Cohane's Resolution Is Readopted But the Effect Is Questioned

Mr. Cohane's resolution for reaffirmation was then put to a vote, and was adopted by the Assembly.

Mr. Murray Shoemaker, of Ohio, inquired if the resolution would come before the House of Delegates again. President Morris replied:

"No. The reaffirmation in the opinion of the President amounts to nothing. The Assembly has spoken. It has simply spoken again. When the matter was referred to the House, the House in effect said that it is beyond its jurisdiction. That is an unavoidable conflict. It is perfectly within the scope of the Constitution. The House may speak in any way it wants to speak, and only in the event that it approves or disapproves or modifies the matters presented to it by the Assembly, does the Assembly have any authority to go further. No one of those three things having been done, the matter stands as it rests."

Mr. Loyd Wright, of California, moved "that the matter be referred to the Board of Governors and a request for a referendum made."

Referendum Provisions Are Not Invoked

Mr. Sylvester C. Smith, Jr., of New Jersey, declared that "As Chairman of the Budget Committee, I

THE HOUSE OF DELEGATES

Received demonstrative reports that the many projects of the Association's assistance in war work are going well.

Opposed reduction of the required "quorum" from six to five in the Supreme Court of the United States.

Amended Canon 27 of the Canons of Professional Ethics to permit lawyers to state the addresses of their references, in "professional cards" in "reputable" law lists.

Reversed its action of last March, by taking from the table and adopting a resolution opposing the McKellar bill to require Senate confirmation of many appointments to the federal Civil Service.

Amended the Association's Constitution so as to require four negative votes in the Board of Governors to reject an applicant for membership.

Decided against giving up its control of its own time, by limiting the use of a motion to lay on the table to curtail debate.

Concluded that its own calendar ought to be better arranged, so as to give more time for controversial matters.

Adopted a number of comprehensive recommendations as to federal tax law and current patent law problems.

Directed studies for the improvement of the law of evidence in the federal courts.

Renewed its support of the program of its Committee for Improving the Administration of Justice.

Rejected the Chicago Bar Association's criticisms of the 1942 "Memphis Agreement" between realtors and the Association, and affirmed its adherence to the principles then stated, after a further agreement had eliminated many of the objections.

Acquiesced in the ruling out, on a point of order, of an Assembly resolution for the outlawing of strikes in war industries, this despite the House's own previous actions on the subject.

Approved a program for renewed and vigorous action to curb abuses on the part of federal and state administrative agencies.

can see that a referendum would cost this Association a lot of money. I am in favor of Mr. Cohane's motion. I would have voted for it, but I do not think that we should carry on a referendum at the tremendous expense, when we can spend that money doing something for Guadalcanal or otherwise, because the House didn't think they ought to consider this resolution."

As Mr. Wright's motion for a referendum was not seconded, Mr. Cohane's resolution accordingly stood as it did, having been twice passed by the Assembly as an expression of its opinion on the subject and having been ruled by the President of the Association to be within the province of the Association, the Chairman of the House of Delegates having ruled to the contrary.

The sixth and final session of the Assembly, as a part of this Annual Meeting, was belatedly adjourned at 5:30 o'clock.

HOUSE OF DELEGATES—FIRST SESSION

The opening session of the House had a large and representative attendance, with many spectators, despite transportation difficulties and the absorption of the profession in many tasks. No state was without representation by a Delegate. The continuing work of the organized bar, under the leadership of the Association, in practical assistance to many phases of the war effort, gave the keynote of this session and received its emphasis, through detailed reports of specific work accomplished or well under way. By means of diligent teamwork for economies and increased revenues, the Association has thus far carried on its wartime activities without sacrifice of surplus. Action on the grist of committee reports was begun. The first division of the session took place on a proposal filed by the Board of Governors to amend Article I, Section 2, of the By-laws, for the election of new members by a majority vote in the Board, following approval by a majority of the State Admissions Committee. After debate on a high plane, a substitute approval to increase from two to four the number of negative votes rejecting an application was adopted. The first session recessed while considering a proposal to amend the Rules of Procedure of the House.

THE opening session of the House of Delegates, as a part of the Sixty-sixth Annual Meeting of the American Bar Association, was called to order by President George Maurice Morris, of the District of Columbia, promptly at two o'clock Monday afternoon, August 23, in the ballroom of the Drake Hotel, Chicago.

Roll call by Secretary Harry S. Knight, of Pennsylvania, showed that 162 members of the House were present. A significant feature was that only Puerto Rico and the Territorial Group were unrepresented by a Delegate present in some capacity; no state was without representation. The Secretary reported that, pursuant to the By-laws, the record of the March meeting of the House had been sent to all its members. No objection or corrections having been received, the record as sent out stood automatically approved.

President Morris referred to the fact that "three splendid and lovable men, members current of this House," had died during the year. They were Mr. Oliver O. Haga, State Delegate from Idaho; Judge Harry P. Lawther, Bar Association Delegate from the State Bar of Texas, and Mr. Joseph F. O'Connell, State Delegate from Massachusetts. In their memory the members of the House arose and stood momentarily in silence.

Committee on Credentials Reports Changes

Mr. Bernard J. Myers, of Pennsylvania, as chairman of the Committee on Credentials and Admissions, reported that since March the Committee had received and approved credentials from state and local bar associations on behalf of the following Delegates:

FRANCIS H. INGE
Alabama State Bar Association
HERBERT W. CLARK
Bar Association of San Francisco
FRANCIS W. HILL, JR.
Bar Association of the District of Columbia
LEDOUX R. PROVOSTY
Louisiana State Bar Association
PAUL F. DUE
The Bar Association of Baltimore City, Inc.
EDWARD J. DIMOCK
New York State Bar Association
ROBERT MCC. MARSH
New York County Lawyers Association
J. PAUL MACELREE
Pennsylvania Bar Association
ROY C. COFFEE
Bar Association of Dallas

Each of these had been certified for the remainder of the term to expire with the adjournment of the 1944 Annual Meeting. The Committee reported its adherence to its former decision that the American Patent Law Association be not admitted to representation as an affiliated organization of the legal profession.

At the suggestion of Judge Robert McC. Marsh, of New York, the credentials of Mr. Charles Evans Hughes, Jr., as Delegate of the Association of the Bar of the City of New York, were included in the Committee's report, which was thereupon adopted by the House.

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The 1943 Annual Meeting

BECAUSE fewer than one-fifteenth of the members of the American Bar Association could attend this year's sessions, this issue of the JOURNAL is devoted largely to the narration of its proceedings, in the Assembly and the House, to the end that all our members may keep themselves fully informed as to the work and plans of their Association, and its forward march, in these stirring times of war. To such extent as coverage of the wealth of material cannot be completed in the now limited space of this issue, the chronicle will be continued in November.

The sixty-sixth Annual Meeting was manifestly in aid of the Nation's war effort, through such practical help as organized lawyers can give and are giving without stint. Otherwise, this gathering would never have been called or held.

As to the Association's assistance in the tasks of wartime, there was an obvious change, from previous meetings, in the tempo and the treatment of the numerous projects. Everything was now reported on as work accomplished or well under way, pursuant to earlier authorizations. The moods of exploration and justification were absent; the many contributions which the Bar is making, particularly by way of assistance to men in the Armed Forces, were manifest. The emphasis was on bringing in needed recruits, from the ranks of the Bar everywhere, for the many tasks which have been planned and organized, approved and welcomed by the Armed Forces or the governmental agencies, and started soundly on the way to achievement.

Nor were the targets limited to tasks related to the carrying on and winning of the war. The sights were raised, to take in also the legal problems of the peace, the restoration of a law-governed world motivated by justice, the providing of cooperative security against recurrence of any rule of arbitrary power as precursor of armed conflict. The meeting was notable for the presence of distinguished visitors from England, Canada, and Australia, who brought cheering messages of the continuing progress which the United Nations are making in the long, hard struggle to win the war and build lasting foundations for the peace.

It was a busy, interesting meeting, in both the Assembly and the representative House of Delegates. It will be long remembered for the actions taken, no less than for the notable utterances. Outstanding among the pronouncements by leaders of the Association were the Annual Address of the President, Mr. George Maurice Morris, and the "induction" remarks by the Incoming President, Mr. Joseph W. Henderson, These reflected admirably the spirit of the meeting and the militant purposes of the Association in these times. Each should be read carefully, without delay, by every member of the Association.

Beginning as a report of the Association's work, President Morris gave a thoughtful analysis of the reasons why lawyers should help to plan for a post-war world which will be based, not merely on "order," but also on law, justice and human freedom, as essentials of genuine peace. On the "home front," he sounded a clarion call for the Bar to renew and redouble its efforts to curb abuses and arbitrary practices on the part of administrative agencies. He drew a new and encouraging picture of the additional forces of public opinion which now are rallying to the standard, because of the experiences which the average citizen is having with such abuses and practices.

In his earnest remarks on taking office, Incoming President Henderson emphasized the same immediate task of the Bar, to secure adequate curbs on administrative abuses, "including an impartial review by a court of justice."

The 1943 sessions of the Assembly and House are to be regarded as having abundantly justified themselves, through their many contributions to an informed public opinion and their demonstration of the lawyer's opportunity to serve his country and aid its war effort, as a civilian and citizen.

Administrative Procedure Legislation

IN the field of administrative law, several notable events occurred at the Chicago meeting. One was the opening address of President Morris, in which the subject was given new approach and treatment. He emphasized that "administrative absolutism has been accelerated by the war," noted indications of a change in the legislative attitude, and felt that "reinforcements are marching to our aid." Incoming President Henderson also spoke vigorously of the Association's objectives in this field.

The second event was the distribution of a brochure on state administrative law, produced under the auspices of the Section of Judicial Administration, in which—among other materials—there is an excellent description of the almost unrestrained administrative exercise of the licensing power.

A third and more detailed presentation is the reports and legislative proposals submitted by the Committee on Administrative Law, which state that "there is a greater public awareness of the problem of administrative justice, and consequently a greater appreciation of the importance of reforms by public and private interests including the Congress of the United States." The Committee secured the approval of the House of Delegates of its program for future activities, including (1) the presentation of a draft of comprehensive legislation for present discussion and final approval in the near future, (2) the publicizing of the measure when finally approved, and (3) the adaptation of the general and approved legislative proposals to specific administrative legislation as it may come before Congress with reference to particular agencies.

The third of the foregoing proposals of the committee marks an advance in the activities of the Association in this field. The Committee states that something more must be done than merely to agree upon and urge the enactment of general legislation; that "specific legislation arises from time to time, and, with the subsidence of the current war emergency, is likely to so arise with great rapidity;" . . . that "the general legislative recommendations ought to be adapted to the particular problems and submitted to the proper legislative committees," and that "hardly any other organized group is either equipped or inclined to so function" since business and industry generally confine themselves to the question of whether there should be regulation rather than how the administrative process is to function.

In short, the Committee proposes that a new and comprehensive bill be drawn, that it be urged as a possible form of general legislation, and that the same proposals meanwhile also be adapted to specific legislation pending in Congress. With its report the Committee submitted a tentative draft of legislation embodying "the essence of prior proposals with some additions to care for the newly important subjects of administrative sanctions and licensing."

The program thus outlined by the Committee and approved by the House of Delegates is promising. It will, however, require great care and effort. It will fill a real need, for otherwise discussions deal generally with the merits or demerits of regulation rather than the tangible elements of administrative procedure. Aside from many other things which the Association is doing and must do in this all-important field, the successful presentation of legislative recommendations will require a more widespread and organized effort than has heretofore been made by the Association. At least three separate phases of activity will be required: (1) The final drafting and revision of the legislative forms will require the best talents of those familiar with the technicalities and practicalities of the subject; (2) A broad educational campaign among lawyers and other professional men and organizations conducted by a large and separate group or committee, who may thus give their undivided energies to the matter; (3) Still a third phase of the effort through the presentation of proposals, including both the comprehensive measure and special recommendations for particular pieces of administrative legislation pending from time to time, to appropriate committees of Congress. It should go without saying that this latter portion of the program might well be assigned to a separate and representative but smaller committee.

Only through some such comprehensive and organized program will the Association do justice to the subject and the need. Of course all phases of the program must be worked together. So far as they are conducted within the Association, the President may act as a correlating agency. The important thing, however, is to realize that no one committee can hope to handle all phases of the subject, and all members of the Bar must assist. It is a responsibility and a public duty, for which the Association should gird itself and marshal its energies at once.

New Plan for Section and Committee Reports

ELSEWHERE in this issue is printed the new Plan adopted by the Board of Governors for dealing with reports of Sections and Committees.

As constantly happens, experience has suggested improvement. The Rules of Procedure of the House impose upon the Board "the especial duty" of supervising the work of Sections and Committees and of transmitting to the House their reports "together with such recommendations or comments" as the Board may see fit to make.

The power to recommend and comment is one which should be, and is, sparingly exercised. Occasionally, however, reports deal with policies which the Board has or has had under consideration, or as to which the Board possesses information which may be helpful. In such cases recommendation or comment is appropriate.

The opportunity afforded to Sections and Committees to appear before the Board before action is taken will make for harmony. Personal appearance before the House by members of the Board who will give the reasons for the action taken and reflect majority and minority views will demonstrate that there is no attempt to dictate to the House but merely an effort to be helpful.

(Continued from page 569)

Favorable Financial Reports by the Treasurer and Budget Committee

President Morris then handed the gavel of the House to its Chairman, Mr. Guy R. Crump, of California, whose "statement" was that "the program states the business to be transacted by the House."

In presenting his report as Treasurer, Mr. John H. Voorhees, of South Dakota, declared that "Due to the economy which all of the Association, its Sections and activities, have practiced during the past year, we are going to close the fiscal year and the Association year with a surplus." The detailed financial statement will be published in the Annual Report volume for 1943.

Mr. Sylvester C. Smith, Jr., of New Jersey, chairman of the Budget Committee, made its report to the House. "A year ago, at our meeting in Detroit," said Chairman Smith, "Mr. Wickser, who was then the chairman of the Budget Committee, indicated that the budget for the year was approved on the basis that we would probably have to go into our surplus in order that we might carry on the extensive war program. I am very happy to report that, including the expenses of this meeting and the expenses of the Committees and Sections, with the cooperation for economy which we have had throughout the year and are having now, we will end the year, the Association year as well as the fiscal year, in the black." (Applause.)

Chairman Smith attributed this favorable showing to the net gain in membership through the work of Mr. David A. Simmons, of Texas, and the receipt of about $13,000 more from dues than was estimated a year ago, this notwithstanding the loss of dues from more than 3700 members serving in the armed forces; to the cooperation had from the JOURNAL and its Board of Editors, which saved some $7,000 from its alloted outlay; and to the work of the Committee on Ways and Means which produced $20,000 of revenues from sustaining memberships, as compared with an estimated $7,500.

"For next year, there is no indication that we can reduce the essential war work of this Association," declared the Budget Committee Chairman. "The war is not yet won. More of our members are going into the services. We must continue to add desirable members to our Association, so that our revenues can be kept up. There is indication that we must enlarge some of the activities of the Association. We need your help, as to new members and new sustaining memberships. The budget for the next year will probably have to go into surplus to a limited extent, perhaps not much in excess of the amount which we have saved this year by our careful operations."

In the matter of costs and savings, Chairman Smith referred to the outlays for printing and the work of the Emergency Committee on Printing Costs, in the interests of reducing costs and improving the effectiveness of Association printing. He asked that all sections and committees cooperate with the Budget Committee and the Printing Committee to those ends.

Members of the Board of Governors Are Elected

Secretary Knight reported that the State Delegates met on March 30 and unanimously made the following nominations for this year's election of members of the Board of Governors: Third Judicial Circuit, Mr. James R. Morford, of Delaware; Fifth Judicial Circuit, Mr. W. Logan Martin, of Alabama; Ninth Judicial Circuit, Mr. W. J. Jameson, of Montana.

No nominations had been made by petition for these offices. On motion of former President Charles A. Beardsley, of California, the House instructed its Secretary to cast its unanimous ballot for the three unopposed nominees, who were declared elected.

No resolutions were offered from the floor at this time, for reference to the Committee on Draft.

Board of Governors Reports to the House

The Secretary read the report of the Board of Governors concerning its meeting on June 25-27. At that session the President reported that delegates to the Inter-American Bar Association meeting, to be held at Buenos Aires, August 7-12, 1943, had been appointed, although traveling conditions and the obtaining of transportation were uncertain; that he had been appointed as a member of the Post-War Planning Committee of the Inter-American Bar Association; that pursuant to the direction of the Board, a Committee on Current Patent Problems, under the chairmanship of Judge Hugh Morris of Wilmington, Delaware, consisting also of Messrs. Samuel E. Darby, Jr., New York City, Donald A. Finkbeiner, Toledo, Ohio, Otto R. Barnett, Chicago, and Don T. McKone, Jackson, Michigan, had been appointed, to make a report to the Annual Meeting; that a Committee on Post-War Work Correlation, authorized by the House of Delegates at its March meeting, had been appointed, consisting of Messrs. Carl B. Rix, Milwaukee, Wisconsin, chairman, Robert R. Milam, Jacksonville, Florida, and Joseph D. Stecher, Toledo, Ohio.

The Board of Governors reported its approval of a recommendation of the Administration Committee that the President be authorized to appoint a committee to survey the administrative and judicial procedures in matters relating to mental cases, and to report to the Board whether the Association has sufficient concern with this field to become active in it. Subsequently this committee was appointed, consisting of Dr. Thomas Gilespie Walsh, chairman of the Commission on Mental Health, Washington, D. C.; Judge Harold Stephens, member of the Court of Appeals of the District of Columbia, one-time member of the College of Surgeons of the American Medical Association; Dr. William C. Woodward, former health officer of the District of Columbia, former head of the Bureau of Legal Medicine of the American Medical Association; Pro-

fessor Rollin M. Perkins, of the College of Law of the University of Iowa, and Dean Albert J. Harno, of the Law School of the University of Illinois.

A report of the Board's Sub-committee on Association Committees, proposing a program under which each member of the sub-committee will be responsible for keeping in contact with the work of certain Association committees during the year and will report to the Board with recommendations concerning the committee's reports, was stated to have been adopted by the Board, with an increase in the membership of this sub-committee to five, to better carry out this program.

The House was further advised that a preliminary draft of a handbook for the information of Section chairmen and officers has been distributed to the officers of the several Sections, after approval by the Board of Governors, with the understanding that the Sub-committee on Sections may make such minor changes as to style, clarification, and typography as may seem desirable.

The Board of Governors reported that upon the recommendation of the Committee appointed by the President to examine the Ross Bequest essays, the Board voted to give the 1943 award to Essay No. 49, which the Committee had unanimously determined to be the best of the essays submitted. Upon opening the identification certificates, it was found that Essay No. 49 had been submitted by Professor Lester Bernhardt Orfield, of Kansas City, Missouri, whose essay was published in full in the September issue of the JOURNAL.

The chairman of the Special Committee on Law Lists appeared before the Board in June, to ask authority to institute such proceedings as might be proper against the National Collectors Network Directory, to prevent fraud arising out of what was believed to be a misrepresentation of a communication from the Committee on Law Lists. The Board of Governors reported that it had voted that the Special Committee on Law Lists be authorized to report the facts to the Federal Trade Commission.

The Board informed the House that it had approved applications for membership from 358 members of the Bar, all of whom had previously been approved by a majority of members of the State Admissions Committees in their respective states; that eleven members who had resigned or been dropped, and who now requested reinstatement of their former membership, have been reinstated, and that the resignations of ninety-two members, and the cancellation of four memberships, all taking effect at the close of the fiscal year 1942-1943, had been approved.

The Board reported further that the chairman of the Section of Taxation and the director of the Practising Law Institute of New York City appeared before the Board in June, to outline a plan for holding tax institutes and clinics. The plan of lectures on various phases of taxation, to be conducted in cooperation with the Practising Law Institute, was approved by the Board, the attendance at such lectures to be limited to members of the Bar.

The Secretary reported also, for the information of the House, various actions taken by the Board of Governors in Chicago on August 20 and 21, which are chronicled elsewhere in this issue. Various matters submitted for the specific action of the House were not reported on by the Board at this time.

Recommendations by the Board of Governors as to Reports of Sections and Committees

This year's report of the Board of Governors concluded with a statement and recommendations for clarifying the practice with respect to the Board's fulfillment of the "especial duty", imposed on the Board by the Rules of Procedure of the House, of supervising the work of the Sections and committees of the Association and of transmitting to the House their reports, "together with any recommendations or comments as to such reports" that the Board may see fit to make.

"This power to recommend and comment is one which should be and is sparingly exercised," declared the report of the Board. "In most instances the members of the Sections and committees and of the House are equally or more familiar with the subject than the members of the Board. Under these circumstances the Secretary merely states, when called upon, that the report is transmitted without comment.

"However, occasionally reports deal with policies of the Association which the Board has or has had under consideration, or the Board has information which may be helpful in discussing the reports. In such instances recommendations or comments are appropriate.

"Sometimes in the past these recommendations or comments have been presented to the House without the Sections, or Committees, having had an opportunity in advance to consider these reports of the Board. This is unfair to the Sections and Committees, and a plan has been adopted which will change this. A member of the Board has been designated to keep in touch with each Section and Committee throughout the year, so as to effect a liaison between the Sections and Committees and the Board. In most cases the result should be to bring about agreement rather than at times disagreement. In rare instances when this does not result, an opportunity will be given for the Section or Committee to present its views to the Board, before any recommendation or comment is made by the Board to the House.

"The new plan also includes a change in the method of presenting to the House such recommendations and comments. The merely formal reading of these recommendations not infrequently fails to reflect the consideration which the Board has given the subject and the reasons for its conclusions. As you will recollect, the formal reading has consisted in the past, when the Secretary is called upon, of merely saying, 'No comment' or 'They approve' or 'They disapprove,' as the case may be. In

the future, when the action of the Board has been unanimous as to any report, it will be stated by the Secretary or some other member of the Board, and the reasons will be given. When the Board itself is divided, some designated member of the Board will make the presentation and will state the division, and an opportunity will be afforded for the minority of the Board to state its position."

Secretary Knight moved that the House approve and adopt the report of the Board of Governors as thus far presented. This was put to a vote and carried.

Recommendations of Committee on Admiralty Law Are Presented

Turning to its heavy calendar of reports by Committees and Sections, the House made the report of the Committee on Unauthorized Practice of Law a special order of business for three o'clock on Wednesday afternoon. Mr. Carl V. Essery, of Michigan, chairman of the Committee on Admiralty and Maritime Law, was recognized to give its report out of turn. Mr. Morris Mitchell, of Minnesota, Mr. Frank Belcher, of California, and Mr. Charles Ruzicka, of Maryland, were named as the House Committee to consider its recommendations. Chairman Essery presented and explained the two recommendations of his Committee, which proposed opposition to H. R. 2972 and S. 1173 to suspend the Public Vessels Act for the duration of the war and recommended continued support of the "Amphibian Torts bill" without the exclusion of government vessels therefrom. The recommendations were reserved for later action.

The report of the Committee on Legal Aid Work contained no recommendation requiring action by the House. It was received and filed. Chairman Albert MacC. Barnes, of New York, for the Committee on Customs Law, reported "no hits, no runs, no errors". The report of the Committee on Securities Laws and Regulations was likewise received and filed, as was the report of the Committee on State Legislation.

President Morris Reports as to Coordination and Direction of War Work

In his capacity as the Chairman, under the action of the House, of the Association's "top" Committee on the Coordination and Direction of War Work, President Morris commented on its comprehensive and well-documented report, which had been distributed.

"This continues to be the major activity of the Association up to the present moment," he said. "My guess is that it will be the major activity of the Association in the coming year." He stressed the belief of his Committee, and of the sub-committee of the Board of Governors, as to the printed report, "that this unusual amount of documentation, even in a period of printing stringency, was warranted to the end that everyone inquiring as to the work of this Committee currently will be informed; second, that many bar associations, including those of foreign countries, which have expressed an interest in this unique activity, will have as much preliminary data available in one place as possible; and, third, that our successors in the American Bar Association, if and when the country is again plunged into a war, may have a reasonably full contemporary record of what their predecessors in this Association did.

"This last reason was accelerated in emphasis somewhat by the difficulty we all experienced in trying to find an accurate and reasonably complete record of any activities of this Association in what is popularly called World War I.

"The work of the Coordination Committee is by way of making new patterns for Association effort. No effort of this Association, during the twenty-two years I have been connected with it, has yielded greater satisfaction to the people who have been engaged in it; and no work of the Bar Association will exceed the value, in the long run, to the country and to the organized Bar, of the work of these divisional committees and the men on the staff of the Coordination Committee."

President Morris stated that the Committee made no recommendation requiring the action of the House. "The Committee recommended that it be continued," he said, "but in the discussion before the Board of Governors it appeared that it has been the precedent always to continue a committee unless an order is entered to the contrary or the committee has accomplished the task for which it was appointed. This, of course, does not refer to personnel. Personnel is always subject to change by the incoming administration of the Association."

On motion of Miss Rawalt, of the District of Columbia, the House voted to receive and file the report.

Mr. Wickser Reports for Committee on Civilian Defense

The Committee on Civilian Defense had also distributed a comprehensive report. Chairman Philip J. Wickser, of New York, discussed the Committee's work and recommendations. He referred first to the useful manual of the law of civilian defense, authorized by the House last March and prepared by the Committee at the request of the OCD. The government printed 33,000 copies, of which the Association received about one-fourth. About 2,000 members of the Association have applied for and received copies of the Manual. Mr. Wickser asked that members of the House, in reporting back to their associations, call attention to the availability and usefulness of this Manual, "which has had an excellent press throughout the country" and has been one of the factors which is having a most favorable effect on the public relations of the Bar as a part of the war effort.

Chairman Wickser reported that Director James M. Landis had recently expressed himself as "very much pleased with the way the work has been going on," with the cooperation of the organized lawyers, but Director Landis wishes to renew the recommendation, which was a part of the House resolution last

March, that "the executives and appropriate committee chairmen of cooperating bar associations throughout the country establish contact with the Defense Councils in their localities, with the idea of exploring the ways and means for advancing civilian protection in civilian defense work."

"It is true," declared Mr. Wickser, "that the apprehension which obtained very strongly a year ago, as to the possibility of loss of life and property in cities and throughout this country, no longer is as strong; but no one may safely predict the fortunes of this war, and certainly this country should have an adequate staff and a properly disciplined public to do the kind of thing we may be called upon to do if we are attacked from the air."

Report as to Legal Assistance to the OPA

For the Committee, Chairman Wickser next adverted to the aftermath of the unanimous House action last March (A.B.A.J., May 1943 issue, p. 260), which was to the effect that, subject to statutory and regulatory authorization, the Association recommend to the cooperating associations various limited ways in which volunteer lawyers could be of assistance in work of the OPA. Statutory prohibitions, as well as regulations of the OPA itself, then stood in the way. It has been hoped that these obstacles would be cleared, as they have been in other instances. "Nevertheless", said Mr. Wickser, "the situation as to them stands where it did last March."

Chairman Wickser informed the House that in many localities, notably Baltimore, Rochester, New York, and other places, "the locally organized Bar, and the lawyers generally, have gone to the front and have been of great help to the administration of rationing programs and the like." He declared that "there is nothing in the position of this House which criticizes such action or recommends that it should not be taken. The position of this Association has been that those are questions which must be decided individually by the bar associations concerned, and that until the regulatory and statutory difficulties as to volunteer assistance are cleared, we cannot reasonably or justly make a broad general recommendation."

To meet the situation, Chairman Sumners of the Judiciary Committee of the House of Representatives introduced H. R. 2295, which provides simply that nothing in the various statutes enumerated shall apply to any person because of services rendered, prior to July 1 of next year, to any agency of the United States, as an officer or employee thereof, if such employment is intermittent and is without compensation or with only nominal compensation. Mr. Wickser declared that the aim of the OCD in its field and of the OPA in its field has been to decentralize their work and make it local, in all of which the volunteer services of lawyers would be most helpful in particular fields; yet in the absence of some such legislation the willing lawyer is in a predicament whether to do the job and risk violating the present prohibitions.

In view of present uncertainty as to whether H. R. 2295 sufficiently covers the situations arising as to all wartime agencies which need volunteer services by local lawyers, Chairman Wickser moved that the House endorse in principle the provisions of H. R. 2295, so as to leave the way open for some substitute bill. The motion was put to a vote and carried.

Reports as to American Citizenship and the Bill of Rights

Circuit Judge Herbert F. Goodrich, of Pennsylvania, member of the United States Circuit Court of Appeals for the Third Circuit, reported as chairman of the Committee on American Citizenship. After noting the dissent of Mr. John H. Cantrell, a member of the Committee, as to certain of its actions, Judge Goodrich referred to the Manual concerning naturalization proceedings, which has just been published. "What we have been trying to do," he said, "is to give to judges and other persons interested in naturalization proceedings something which will serve as a guide to magnify the importance of these proceedings, for the person who undergoes them. If the members of this House will call the attention of judges and others to this Manual, it will be found of value and use both to the courts and to new citizens." The report was received and filed.

In the absence of Chairman Douglas Arant of the Committee on the Bill of Rights, Mr. Morris Mitchell reported the action of the Board of Governors as to the dissent by Mr. George Buist, of South Carolina, a member of the Committee, from the Committee's action in filing a brief *amicus curiae* in the Supreme Court of the United States in *West Virginia State Board of Education* v. *Barnette, et al.* After quoting the resolution which created the Committee, Mr. Mitchell stated that:

"In this instance the Bill of Rights Committee was authorized by the Board of Governors to appear and file a brief *amicus curiae* in the above-entitled case. The requirements of the resolution were, therefore, fully complied with. It would have been preferable, however, if time had permitted a full discussion of this matter by the Committee prior to the time of the decision of the Committee to file a brief. It is hoped that in the future there will be sufficient time for full discussion of matters of this importance."

The report of the Committee was thereupon received and filed. Like action followed as to the report of Mr. Robert E. Freer as National Director of the Public Information Program, and as to the report of the Committee on Labor, Employment and Social Security, on the motion of Mr. Robert R. Milam, of Florida, a member of the Committee. Mr. Joseph W. Henderson, of Pennsylvania, chairman of the Committee on the Custody and Management of Alien Property, did not supplement its printed report, which was received and filed, on his motion.

Mr. Benjamin Wham, of Chicago, chairman of the Committee on Ways and Means, brought down to date its

report as to sustaining memberships. As of July 1, there were 1175 sustaining memberships, but many of these were not committed as to continuance. "As a result of a strategic letter," he said, "we had 827 renewals up to last night, which means in round figures $20,700 at $25.00, or a little more than $14,000 of excess over regular dues. We have 238 still to hear from, and we have hopes." Amid applause, Mr. Wham declared that "if the Association needs more money for the coming year and it is properly presented, we think from our experience that the rank and file members will be loyal and will supply the money needed." The report and the supplemental report were received and filed.

Committee on Rules and Calendar Reports Amendments

Mr. Howard Barkdull, of Ohio, chairman of the House Committee on Rules and Calendar, gave its report as to amendments of the Constitution and By-laws. Mr. W. Leslie Miller, of Michigan, chairman of the Section of Commercial Law, and Mr. Sidney Teiser, of Oregon, had filed with the Secretary of the Association the following amendment to Article IX, Section 1, of the Constitution:

"Amend Article IX, Section 1, of the Constitution, by striking out the words 'Commercial Law' in line 12 thereof, and inserting in lieu thereof the words 'Corporation, Banking and Mercantile Law,' so that said line will read: 'Section of Corporation, Banking and Mercantile Law.' "

This amendment having been duly published in the JOURNAL and the Advance Program, its sole purpose was stated to be to change the name of the Section of Commercial Law to the Section of Corporation, Banking and Mercantile Law. Chairman Barkdull reported that the Committee on Rules and Calendar approved of this amendment. His motion for its adoption by the House was carried by the required vote.

The second amendment related to the By-laws. It had been duly filed by Mr. Benjamin Wham, to remove some of the difficulties encountered by the Committee on Ways and Means as to the continuance of sustaining membership. It was as follows:

"Amend Article I, Section 4, of the By-laws, by striking out the words 'written notice to the Treasurer and' in line 5 thereof; by inserting in line 6 the word 'fiscal' between the words 'each' and 'year'; by striking out in lines 6 and 7 the words 'from July first to June thirtieth following, payable on July first of each year in advance'; and by striking out in lines 12, 13 and 14 thereof the words 'upon written notice to the Treasurer before July first of any year, and shall thereafter pay only the regular dues as provided by Article II, Section 1' and substituting in lieu thereof the words, 'by payment only of the regular dues as provided by Article II, Section 1.' "

The effect of the amendment would be that Article I, Section 4, of the By-laws would then read:

"Section 4. *Sustaining Membership.* Any person eligible for membership in the Association and elected as above provided, and any member of the Association heretofore elected, may become a sustaining member of the Association upon payment of the sum of $25.00 dues for each fiscal year, which sum shall include the regular Association dues and the individual subscription of the member to the AMERICAN BAR ASSOCIATION JOURNAL which is $1.50 per year. Any sustaining member may become a regular member of the Association by payment only of the regular dues as provided by Article II, Section 1."

The amendment having been duly published, the Committee on Rules and Calendar approved it. Mr. Barkdull's motion for its adoption by the House was carried by the required vote.

Amendment as to Vote Required for Electing Association Members Is Offered

Chairman Barkdull next reported as to a proposed amendment of the By-laws, as to the election of members of the Association. Under the Constitution of the Association prior to 1936, one negative vote in the former Executive Committee prevented the election of a person approved by a majority of the State Council. In the reorganization of the Association in 1936 this provision was transferred to the By-laws, and amended to require two negative votes in the Board of Governors for rejection. At its June meeting, the Board of Governors by resolution unanimously adopted proposed for consideration the following amendment of Article I, Section 2, of the By-laws, by striking out from Section 2 the last sentence thereof, which reads as follows:

"Two negative votes in the Board of Governors shall prevent an applicant's election"

and inserting in lieu thereof the following:

"A majority vote of the Board of Governors shall be required to elect a nominee to membership in the Association."

The effect of the amendment would be to change Section 2 to read as follows:

"Section 2. *Election of Members.* All nominations made pursuant to Section 1 hereof shall be reported to the Board of Governors for action. A majority vote of the Board of Governors shall be required to elect a nominee to membership in the Association."

Chairman Barkdull stated, for the record, that the amendment proposed by the Board of Governors had been duly filed and published. The Committee approved the amendment; Mr. Barkdull moved its adoption. President Morris stated that the Board of Governors had designated its presiding officer to "explain the basis for the Board's proposal," which he would do "as a chairman and not as an individual."

President Morris Explains the Board of Governors' Proposal

In that capacity Mr. Morris sketched the origins of the proposal, and reviewed also the history of the Association from its founding in 1878, with the increasing attendance

and broadening scope of its meetings and the changing concepts of the purposes and objectives of the organization, until "the delegate idea, at the meeting of the Association at Boston in 1936, was given an implementation which has resulted in this House of Delegates of the profession of law in the United States. With that new House there developed a somewhat different attitude on the part of the Association in its relationship with the state and local bar associations of the country and with the community at large."

President Morris continued by saying that "Nonetheless there continued throughout all this period a great deal of the social relationship, the friendly social relationship, of lawyers who liked each other, thought alike and talked alike, and were happy to meet each other at least once a year in a general convention. There is not the slightest question that this social relationship, friendly intercourse, has been one of the strong sources of developing the interest of the members in the Association and in the organized Bar. . . .

"In the course of conversations, related and subsequent conversations, with many people, I have yet to hear anyone who suggested that the American Bar Association is not a selective organization. It seems to have been generally agreed that the Association should proceed upon a basis where it is in a position to choose those persons whom its members wish to have associated with them.

The Present Process of Admission to Membership

"As you are aware, the process of admission to the Association is this: A member of the Association nominates or endorses the application of an applicant. That application is presented to a committee of the state, or the equivalent jurisdiction, in which the applicant is a resident or has his principal place of practice. That Admissions Committee consists of five persons appointed, one each year, by the State Delegate; that is to say, unless a State Delegate remains in office more than a single term, he appoints but three members. Any applicant for membership, before he receives the nomination of that Committee must receive a majority vote of the group. The nomination is then sent forward to the Board of Governors. The actual mechanics are that the nomination is sent forward, and the information on the applicant's card is listed, in a long list. This is passed around among the Board of Governors. Each one votes at the bottom of a sheet, at a place indicated for his signature. These are sent into the Headquarters staff of the Association, and there the votes are counted.

"Sometimes the votes are held up by members of the Board because they receive some communication, from a member of the Association or from other sources, respecting a particular applicant. Those cases are referred to a sub-committee of the Board of Governors which is known as the Committee on Pending Applications. That Committee investigates the matter and makes a recommendation to the Board, either that the man be elected, that he be rejected, or that some further investigation in the matter be made.

Origins of the Proposal To Broaden the Suffrage

"The feeling on the part of the persons who represented the New York City bar associations was that this method, and particularly the provision in the By-laws which permits two members of the Board of Governors to prevent the election of any nominee, permits of an exercise of a vote on a basis which the committees of the New York City bar associations felt might not be wholly justified. They therefore proposed that probably the best way to widen this suffrage was to increase the number of votes required to keep a man out, so to speak.

"As you know, there are sixteen voting members of the Board; and a suggestion was made—I forget whether it was formal or informal—that the rule should be changed as to the Board of Governors to correspond with the rule in the states; namely, that a majority vote should be required for election. It was also suggested that probably the matter could best be settled by taking a referendum of the Association's membership, in which a declaration of the policy of the Association should be presented to the membership for a vote."

Consideration of the Matter by the Board of Governors

Concerning the discussion of the matter by the Board of Governors on June 25 and 26, President Morris declared that "I am very happy to say that I have never heard a discussion, not only in the Board of Governors but before the Association itself, which seemed to me to be as marked for its restraint, for its reserve, and for its statesmanlike approach. All persons on the Board appeared to be agreed that they were charged with the responsibility of making a decision which was in the best interests, as far as they could judge, of this Association. I suppose that no two men on that Board thought alike. Any one of them, in a debate as to the merits of the general issue, might have had a strongly differing view. The members of the Board felt that, regardless of the merits of the collateral issues raised by this proposal to make more consistent with the nominating process the election process, the interest of the Association was their responsibility.

"As a consequence, the Board evolved the proposal which has been put before you by the chairman of the Rules and Calendar Committee. That is the proposal of the Board, which we think may result in at least as little of an unsatisfactory solution to this problem as the situation permits. The chairman of the Board of Governors was selected for this task, not by his own choosing, but because the Board felt that he had less at stake in presentation of this question than any of its other members."

Meaning of a "Majority Vote" Is Clarified

Mr. Sidney Teiser, of Oregon, asked for a clarification as to whether the phrase "majority vote," in the Board's proposal, meant "a majority of the entire Board or a majority of the Board present." Mr. Morris replied that "My understanding is that, in view of the method of voting in the ordinary situation, the phrase refers to nine or more members of the Board. If the Board is in session, the point might be made that it refers only to the members of the Board present at the session; but in order to handle the applications, the resignations and the reinstatements, which come along in some hundreds each year, it is necessary to have a system which does not require action at an actual meeting of the Board.

"Therefore I think the answer to Mr. Teiser's question is that for normal purposes it refers to nine or more members of the Board, as the vote is taken by mail vote. If, on the other hand, the Board is in session, anyone who cares to raise the question may at that time raise it."

Substitute for the Board of Governors' Proposal Is Offered

At this point, a marked difference of opinion among the members of the House was manifested for the first time during this session. Mr. Tappan Gregory, of Illinois, took the floor to say that "I have the most profound respect for the Board of Governors and their individual and collective judgments, and also for the Committee on Rules and Calendar. It does seem to me, however, that in a selective organization it is not necessary, in making any changes in the rules of admission, to have quite so wide a gap as results here when we abandon the exclusion of applicants on two negative votes and go to the other extreme of admitting applicants on a majority vote of the Board."

Accordingly, Mr. Gregory submitted and moved an amendment, by way of substitute for the proposal of the Board of Governors, so that Article I, Section 2 of the By-laws will read:

> Four negative votes in the Board of Governors shall prevent an applicant's election.

Mr. Henry Quinn, of the District of Columbia, seconded Mr. Gregory's substitute, which was stated by Chairman Crump to amount to striking out "two" and inserting "four" in the place thereof, in the present wording of Article I, Section 2, of the By-laws.

In response to an inquiry by Mr. Vest, of Kentucky, Chairman Crump ruled that a motion to amend as to the number of votes required in a State Admissions Committee, instead of in the Board of Governors, would not be germane to the filed amendment.

Judge Marsh Speaks for the New York County Lawyers' Association

Former Judge Robert McC. Marsh said that he spoke in behalf of one of the two local bar associations in New York City, which have about 2,000 members of the Association and enjoy the privilege of representation in the House. He opposed Mr. Gregory's substitute and favored the recommendation of the Board of Governors. "There is no room for doubt, I think," said Judge Marsh, "as to how the majority of the members of this Association residing and practicing in the City of New York —and I won't extend my representations further than that—feel about this question. The matter is one which requires discussion as a practical matter. It may be unfortunate that it was brought to the front, but it did appear to our associations that there is a fundamental question of policy affecting the American Bar Association, its work, and its standing before the public, which would have to be met sometime and, because the incident arose, must be met now. What I am concerned with, and what everyone here on either side is concerned with, is what is best for the American Bar Association; and it is on that plane that we can discuss it.

What Will Be the Effect on the Influence of the Association?

"The question is: What is the effect upon the influence of the Association? We heard this morning, in the brilliant and profound address by our President, and it was also touched upon in the welcoming address of the President of the Chicago Bar Association, that we here in this meeting are recognizing that the lawyers of America, represented in the American Bar Association, are faced with a task of contributing the best the Bar can contribute to the post-war development at least of America; and we must contribute, not only theoretically by plan, but we must contribute our influence, we must make that plan effective. The question is: Can the American Bar Association make its plans as effective if there is ground for suggestion or ground for belief in any quarter that there is in the admission of members to the Association a discrimination against any kind or class of people?

"Looking ahead, looking to the influence of this Association in the future, I can't help but feel that the most important thing for us to do is to clear the way, to clear the vision, to make it impossible that there should be any room for criticism, and not burden our proposals, when they come to be made, with unnecessary handicaps, with any thought that they are not truly American, that they are not truly representative of the entire body of the Bar, or with the thought that after all they are not truly democratic."

Mr. Lyman, of Connecticut, declared that "In support of the substitute motion, I need add nothing to the admirable, succinct statement of the reasons, by Mr. Gregory, for not swinging the pendulum the entire way in the other direction."

Delegate Charles E. Hughes, Jr., Advocates Majority Vote

Mr. Charles Evans Hughes, Jr., Delegate of the Association of the Bar of the City of New York, declared that he did not think that "the proposal unanimously recom-

mended by the Board of Governors does swing the pendulum to the extreme." He felt that there are many arguments why "the action of the Committee on Admissions in each state would be a sufficient manifestation of the selective process.

"Granted that this is a selective organization", urged Mr. Hughes, "there should be a selection for character, for professional reputation. There should not be other tests." He said that the Association of the Bar has a Committee on Admissions "which sifts for character and professional reputation but not for other considerations.

"This Association has taken a position in the nation which is incompatible with any narrow social test. This Association purports to speak for the Bar of the nation. It purports to represent the Bar of the nation before the nation and in foreign lands. No organization which has by its own will and for its own prestige and the perpetuation of its very large influence taken those steps can perpetuate a discrimination in its own membership. I earnestly hope that the recommendation of the Board of Governors will be followed and the amendment defeated."

Mr. Henry Quinn Urges Mr. Gregory's Substitute

Mr. Henry I. Quinn, State Delegate from the District of Columbia, declared that if five out of twenty-one members of the Admissions Committee of the Association of the Bar of the City of New York were empowered to reject an applicant, a similar proportion in the American Bar Association could not be objectionable, with both organizations credited "with the same high motives." He urged the adoption of Mr. Gregory's proposal, based on a similiar ratio.

Mr. Harry Gottlieb, of Illinois, opposed Mr. Gregory's substitute. "I don't think it matters," he said, "that this Association was formed originally as a selective organization by some men on pleasure bent at Saratoga Springs. 'They builded better than they knew'—they created a great American institution, and it should be conducted on American principles."

Importance of Changing the Number of Votes Is Decried

Former President William L. Ransom, of New York, was recognized to make what proved to be the concluding remarks of the debate. "Although I have been, for more years than I like to think about, a member of each of the New York City bar associations, I do not for a moment undertake to speak here in their behalf. There are one or two things that I think I might say which ought to be said, in this meeting and on this record.

"Probably more than any other man in this room, or at least as much, I am responsible for the provision which is here under discussion. If I didn't draw the change made in Boston, I certainly passed upon its language. I know its history and its origin. There was no purpose of introducing into the organic law of this Association any barrier based upon any such considerations as were lately suggested by certain resigning members in New York City.

"This is a representative organization of the legal profession in America. The administration of those provisions rests with the men whom you elect.

"I don't care very much whether this provision of the By-laws permits rejection of an unworthy applicant by two votes or four votes or nine votes. Those who emphasize numbers do not know the history of the practical administration and work of this Association. As long as any man I see before me in this room—I think excepting only Major Tolman—I have been a member of the Board of Governors or the former Executive Committee of this Association; and you all ought to know—I believe my recollection in this respect is correct—that there has never been before this Association, in its Board of Governors, an application for membership approved by the State Admissions Committee as to which the result would have been different under any of the proposals which you are now considering. I have never known an application for membership which came to us from a State Committee for which there was a majority of the votes cast but there were sufficient negative votes to exclude.

Action of the New York City Associations Was a Friendly Act for Unity

"I want to make one other thing clear, which perhaps I can say better than those who have greater authority if not length of years in the New York City associations. I don't want any member from any part of this country to feel that the creation of this joint committee by the New York associations was an unfriendly act to the unity of this Association and the legal profession in America. (Applause)

"I have no sympathy with those whose highly publicized resignations from this Association created a false and unfortunate issue at a time when all our energies and thoughts in this House and in this Association ought to be given to other issues. The creation of this joint committee, I am sure I am warranted in saying, following these highly publicized resignations, was in the interest of a constructive and remedial solution of this matter and not for the purpose of embarrassing this House or this Association or the legal profession, with any divisive issues.

"The situation is far more fortunate, gentlemen of the House, since this committee was created than if it had been permitted to run amuck. We are in debt to the New York City associations and to the members of the joint committee for what they have done, regardless of individual disagreements of any of us with details of their position.

Question Is Not One of Two or Four or Nine

"In conclusion let me say that the fundamental question before us isn't two or four or nine. It isn't anything that we can put in the By-laws. There isn't anything that you could do by taking up the time for a national

referendum of our profession. I agree that the referendum provision has been a tremendously effective provision in the Court fight. It is not suited to this kind of a situation. We are dealing here with a situation which is something that rests deep in the hearts and minds of men and women throughout this country.

"We come from many different places. We live under many different conditions, with many different backgrounds; but regardless of what those are, let us apply in the vote which we are about to take only one standard, and that is: What will best preserve the splendid unity of this Association and the effectiveness which it has developed in representing the legal profession and in working for the public before legislative bodies and in high public places.

The Unity and Effectiveness of Our Work Is Paramount

"More than many of you, I can recall the days when representatives of the American Bar Association could not get a fair hearing on the merits of their proposals before legislative bodies in this country. I do not want to see those days come again, because we have had now quite a period when those who at heart were hostile to us have had no ground which they could raise against our truly representative character in the legal profession. I am sorry that this issue arose, but we are confronted with a condition and not a theory.

"I am not going to urge you to vote for four or to retain two or to adopt nine as the standard, because after all, the question of whether this is an Association to which any qualified and highly regarded member of the profession, approved by a majority of his State Admissions Committee, may belong, rests in the men whom we elect and not in what we put in the By-laws; and I would be willing to leave this question to the long-run judgment of the men whom we elect, under any of the provisions that have been proposed here as substitutes for what is already in our law.

"Let us make it our sole purpose, not only in what we say here but in what we do here by our vote, to apply only one standard: What will preserve the unity of this Association, North, South, East and West, and what will preserve best the continued ability of this Association to go before committees of the Congress as a representative body of the legal profession and get a hearing there for the vastly important things which we ought to be taking up instead of having to deal with this kind of a question, in this kind of a form, under these times in America." (Applause)

The Substitute Proposal by Mr. Gregory Is Adopted

The House called for a vote. The question was put, on Mr. Gregory's amendment by substitution for the Board of Governors' recommendation. The rising vote was polled. In favor of the substitute eighty members of the House were counted; in opposition, forty-four votes were counted. Some thirty-eight members of the House, who had registered in attendance at the meeting, were not present or did not vote.

Chairman Crump declared the substitute carried and the House to have voted for the amendment of the By-laws according to Mr. Gregory's proposal.

Amendment of the Rules of the House Is Next Submitted

The concluding item of the report of the Committee on Rules and Calendar proposed an amendment of the Rules of Procedure of the House of Delegates in relation to the use of motions to lay on the table as a means of ending debate. Chairman Barkdull stated that "The Committee's attention has been called, by several members of the House, to the frequent abuse of the motion to lay on the table. In most instances, motions to lay on the table carry in the House of Delegates because the members are anxious to be rid of a troublesome question, upon which the House does not care to hear further debate or to commit itself by affirmative action. From a parliamentary standpoint this is an abuse of the purpose of the motion."

Accordingly the Committee proposed the following amendment of the Rules, of which notice had been duly given to the members of the House:

"Amend Rule V, paragraph 1, lines 11 and 12, of the Rules, so that the same, as amended, will read as follows:

"Any subject may, by a vote of two-thirds of the members present, be made a special order. No motion to lay on the table any resolution, motion or other matter then pending before the House, shall be in order unless the member making such motion shall give assurance to the Chair that he intends to move, during the then session of the House, that the resolution, motion or other matter so laid on the table, be taken from the table for consideration and action by the House."

Chairman Barkdull, before explaining the proposal and the available alternatives to a motion to lay on the table, announced that State Delegate William W. Evans, of New Jersey, a member of the Committee, dissented from the majority recommendation. Mr. John Kirkland Clark, of New York, seconded the motion to amend the Rules, on the ground that the rights of the mover of a proposal to explain it should be protected against a motion to table. Judge Arthur Powell, of Georgia, asked Chairman Barkdull to interpret the procedures availed under the Committee's proposal, if adopted.

Ex-Governor Slaton, of Georgia, declared that "the matter for the House to decide is whether it wishes to be deprived of an implement which is granted in all parliamentary manuals and in all legislative assemblages. There is no substitute for a motion to lay on the table, if the House doesn't want a debate to continue. Except possibly in one case, if there has ever been any injustice here by reason of the operation of a motion to lay on the table, I haven't heard of it."

At 5:30 o'clock, Mr. Evans, of New Jersey, moved that the House recess until Wednesday. This was carried.

House of Delegates—Second Session

The Wednesday deliberations moved along through a heavy calendar. To keep control of its own time, the House decided against amending its Rules to limit the use of motions to lay on the table. Long debate was listened to, as to the "Memphis Agreement" between realtors and the Association; a substitute offered in behalf of the Chicago Bar Association and others was defeated, and a reaffirmance of the "agreement" was voted, after the Board of Governors obtained the elimination of many of the points of objection. The House reiterated its support of the efforts of the Committee for Improving the Administration of Justice, as a part of the Association's wartime work. Efforts to place the House on record against the McKellar bill, for Senate confirmation of certain federal appointments, was renewed but deferred. Important recommendations by the Committees on Aeronautical Law, Law Lists, and Professional Ethics and Grievances, were approved by the House. A graphic report of the useful activities of the Committee on War Work featured the session.

WHEN the House reconvened Wednesday afternoon, its consideration of the proposed amendment of the House Rules was continued, with a supplementary statement by Chairman Barkdull of the Rules and Calendar Committee. The ensuing debate was largely parliamentary and technical; Chairman Barkdull and Mr. William W. Evans, of New Jersey, read and argued from Roberts' Rules of Order, Jefferson's Manual, the Procedures of the National House of Representatives, and other authorities. As a former Speaker of the Assembly in the New Jersey Legislature, Mr. Evans maintained that the motion to lay on the table is "one of the most honorable and ancient of the prerogatives of a parliamentary or deliberative body."

Mr. Murray Shoemaker, of Ohio, moved that, for clarity, the words "current meeting" be subsituted for "then session", in the Committee's proposal. This was seconded.

Mr. Willis Smith, of North Carolina, expressed the view that it would be unwise to "complicate the Rules of this House. If the majority changes its mind and wishes to take a matter from the table, it can do so, and has done so. Ours is a fair rule. If we are tired of listening to debate on any subject, the motion to table is a good way to test the sentiment of the House. A majority can take it up again if the majority wants to do so."

Amendment of the House Rules Is Defeated

Mr. Thomas B. Gay, of Virginia, a former Chairman of the House, declared that "there have been a number of instances in which representative members of this body have personally felt very much aggrieved over the manner in which the motion to lay on the table was used summarily to suppress debate." Mr. Gay thought that the amendment "would confine the motion to its normal and proper parliamentary function." In response to a question from State Delegate Charles M. Hay, of Missouri, Mr. Gay expressed the view that Mr. Shoemaker's motion to substitute the phrase "current meeting" made the intention clear to require that the intention be stated to move and to take from the table at any session remaining in that annual or mid-year meeting.

On a division of the House, Mr. Shoemaker's amendment was adopted. The Committee's proposal as amended was then defeated by the House, on a rising vote.

Committee on War Work Reports Its Accomplishments

Chairman Tappan Gregory of the Committee on War Work reported that, for its compendium of the laws as to the property rights of interest to service men, the compilation has been completed as to some thirty-two states and is in the process of editing as to some ten other jurisdictions.

Through its Circular Letter R 1164 on June 26, the Navy Department has followed the Army in the setting up of legal assistance offices, with the cooperation and active aid of the American Bar Association and the state and local associations mobilized under its leadership.

"In the Army there are now established and operating approximately 700 legal assistance offices," said Mr. Gregory. "We have distributed to all of the state War Work Committee chairmen the letter of Mr. W. R. Koerner, Chief Counsel of the Gasoline Rationing Section of the OPA, dated April 24, advising that those civilian lawyers who are regularly engaged in service to the Army under War Department Circular 74 are entitled to additional gasoline where necessary, provided they can persuade their local boards to that effect.

"We requested from the Committee on Professional Ethics and Grievances an opinion on questions stated. Under date of June 26, that opinion (No. 252) was rendered. It states that 'We think there is no reason why a lawyer should not advise a registrant upon any legal question arising under the Selective Training and Service Act of 1940 or the Rules and Regulations promulgated thereunder. He may advise a registrant as to what facts would support a claim of deferment, and with respect to evidence that would establish the truth of such facts. He may assist the registrant in procuring proper evidence and in presenting it in affidavit or other proper form to the board or officer before whom the matter is pending. He may prepare and file with the board or officer before whom the matter is pending a concise memorandum in support of the registrant's claims and a brief of decisions or rulings applicable thereto. Since the registrant may be subjected to compulsory military training and

service, and the advice and legal assistance have reference to his classification under the Selective Training and Service Act of 1940, and ordinary private rights are not involved, we think the service should be rendered as a patriotic obligation and a contribution to the war effort without charge to the registrant.'

Difficult Questions as to Scheduling Services and Fees

"We have before us the difficult question of the possibility of securing throughout the country some uniformity in the schedule of services to be rendered by the different state bar association and local bar association Committees on War Work, and those matters for which they will render service without charge and for which they will make some charge. It is a difficult thing for the American Bar Association Committee to secure any uniformity. It is not properly our function to tell these state committees what they should do and how they should do it.

Divorce Matters Involving Men in Service

"We have recently presented this matter in connection with the most troublesome question now coming before the different committees, that of divorce matters involving service men, to the Committee on War Activities of the Chicago Bar Association. That committee has adopted a resolution changing its policy. I should like to read that to you:

" 'It is now apparent that a large percentage of the legal matters disturbing men in the armed forces relate to domestic relations and particularly to divorces. Calls for assistance in the solution of such problems have reached proportions persuasive of the wisdom of a change of policy. If we are to achieve our objective of relieving the minds of those in the armed forces of anxiety over legal problems to the extent contemplated, we must be prepared to undertake the representation of these men in divorce cases. Some can afford to pay fees for such service, but probably the majority, and perhaps the overwhelming majority, cannot.

" 'The organized bar has taken pride in the amount of gratuitous service rendered service men and their dependents, and the Army and Navy have come to place great reliance on the availability of the members of the bar for this service without charge. We can well afford to ignore the comparatively few cases where the bar may be imposed upon by those well able to pay, in the interest of making the maximum effort to insure skillful attention to those in sore need.

" 'It is, therefore, resolved by the Committee on War Activities of the Chicago Bar Association that hereafter representation to service men in divorce matters will be furnished without compensation by the volunteer panel of lawyers organized by the Chicago Bar Association for military legal service, whenever the case of the service man appears meritorious and as long as the experience of the committee indicates that this gratuitous service is feasible and practicable.

" 'In determining the validity of any claim by any service man seeking to avail himself of gratuitous representation by the bar in the matter of a divorce, whether he be plaintiff or defendant, it will be the policy of the Chicago Bar Association committee to maintain a special committee always available for prompt decision on the question of rendering service with or without charge in such cases as appear to the office personnel to be outside the scope of the committee's service.

" 'It will be quite apparent that effective service cannot be rendered where the member of the military or naval forces is in camp outside the State of Illinois and not available for consultation, unless his case is carefully briefed, his witnesses listed and interviewed and provision made for payment of costs by the service man or someone in his behalf other than the volunteer lawyer assigned.

" 'The success of our plan will depend upon the cooperation we may secure from legal assistance officers at the service man's station, from the Red Cross, from the organized Legal Aid, and from the Provost Marshal General's Office.' "

An Interesting and Difficult Case with International Complications

As instancing the "many interesting and difficult questions which come up in the different states," for the action of the Committee on War Work, Chairman Gregory told of an episode reported by Mr. Joseph W. Henderson, who has been serving as a representative of the Third Circuit as a member of the War Work Committee. As graphically reported by Mr. Henderson, the facts of this unusual case were that one "Jones, a sailor on the Battleship . . . . . ., which was a British ship in the Philadelphia Naval Yards, laid up for repairs, married on the 7th day of December a Philadelphia girl. She was 16, and in company with her mother they went to Elkton, Maryland. Jones was 21. About a month and a half after the marriage, or a little later, evidence of a coming event started displaying itself on the bride. She then told Jones that she had had an affair with her next door neighbor who was in the American Army, and that he was the father of the child to be. She was in love with him, but her mother objected to her marriage to him.

"Jones, upon learning these facts, of course, realized that he had been imposed upon, and wanted to know what he should do about it. The chaplain of his ship got in touch with us. We at first endeavored to have the matter taken care of by the Maryland authorities, to see if it were not possible to annul the marriage. Incidentally we received no particular cooperation from them, so we finally decided to take care of the matter ourselves; and since the girl involved lived in Philadelphia, we tried to procure the annulment here.

"We procured from the girl in question written statements, and these gave us the basis of the annulment proceeding. In the meantime we had learned that the American soldier boy was perfectly willing

to marry her and desired to do so. There then began a race against time, so that the proper parents would be on hand at the time of the arrival. The libel for annulment was filed before a very sympathetic judge, who did everything in his power to expedite the case. There was a master appointed whose usual fee was $100, but who agreed to serve for nothing. We in turn put up the fee which was necessary before he could be appointed, which fee was later returned to us less certain impounding.

"The master of the court approved the annulment. The court granted it. We had in the meantime many meetings with the young lady, had arranged for the blood test for her marriage to her future husband, and arranged for the waiving of the three-day period. The final decree and annulment was granted Tuesday, July 20. The soldier boy appeared here on Wednesday, July 21, to procure a marriage license. They were married. The child was due on the 27th day of July.

Appreciation from British Authorities

"This case was fraught with all kinds of difficulties. The young girl was a minor. So at every turn she had to be accompanied by a guardian. Her father and mother had been separated for some years. She had a sister. Her father eleven years ago took her younger sister with him. They have never been heard of since. She was a sweet, young girl, and she told me one day in the office that she attended school and that she should have been carrying books under her arms instead of what she was.

"We have by this case I am sure established a most friendly relationship with our British friends. So far as I know it is the only international case so far handled by the War Work Committee."

In concluding, Chairman Gregory read the letter received by Mr. Henderson on August 3, Fleet Mail No. 40, from the British Naval Liaison Office, at the Philadelphia Navy Yard:

"I want to thank you most sincerely for all that you have done for the British Navy, myself as captain of a ship, and Able Seaman Jones. I realize how lucky it was for us that you handled the case and how generous you were in doing all the work free of charge. The Jones case was a nasty affair, and I am so delighted that you have smoothed it all out. I am really most grateful to you and I know Jones is too. Thank you again for being so generous and public spirited." (Applause)

The report of the Committee on War Work was thereupon received and filed.

The "Memphis Agreement" and the Action of the Chicago Bar Association

The special order of business for this time on Wednesday afternoon was then taken up. Chairman Edwin M. Otterbourg of the Committee on Unauthorized Practice of the Law gave its thirteenth annual report. He commented on the various decisions by courts since the 1942 meeting, to eliminate unauthorized practice of the law, and declared that "the most effective way is first to get public support for its elimination" and the cooperation of national associations of laymen through agreements defining the lawyers' field.

In that connection he explained particularly the so-called "Memphis Agreement," in May of 1942, with the National Association of Real Estate Boards. "The Board of Governors of this Association approved the statement of principles," Chairman Otterbourg said. "The Board of Governors reported its action to the House at the 1942 Annual Meeting, and the House approved its report.

"On August 25, 1942, the conference group of the two associations organized and recommended to state and local boards the desirability of adopting the statement in substance and of setting up local conference groups. It was perfectly clear from the letters which had been sent out, from the language, and it was clear under Article V, Section 2, of the Constitution of the American Bar Association, that nothing which this House of Delegates or any committee or Section can do is binding upon any state or local bar association unless that bar association chooses to accept and join in what is to be done. All of it has been voluntary cooperative work throughout the years in these fields with the Bar of America, adopting as much as it could of a consistent bar policy as recommended by this Committee, which has ever in its mind the importance of the public relations aspects of the problem."

Chairman Otterbourg expressed "the very great regret" of this Committee that the Chicago Bar Association not only declined to adopt the program, as was its right, but criticized the statements which had been worked out so carefully, and even asked the Board of Governors to rescind its approval. "Closely related to the fight against unauthorized practice of law," declared Mr. Otterbourg, "is the problem of good public relations of the Bar. Misguided or extreme action by lawyers, badly prepared cases which result in defeats, or mistaken conceptions of what the public expects from lawyers, bring about results in unauthorized practice cases which have an adverse effect upon the lawyers in any community where this happens. The development of a consistent bar policy, always bearing in mind the importance of the aspect of good public relations, has been one of the major contributions" of the work of the Committee on Unauthorized Practice of the Law.

Chairman Otterbourg asked that the report of the Committee be received and filed. It was so ordered.

Board of Governors Reports Its Recommendations as to the Controversy

Mr. Morris Mitchell, of Minnesota, then reported the views of the Board of Governors as to the matters challenged by the Chicago Bar Association and others. "This so-called 'Memphis Resolution,'" he said, "was a culmination of a long dispute between the realtors and lawyers as to what constituted the unauthorized practice of law. Realtors contended for the right to do any conveyancing

in connection with real estate transactions which they handle and to do many other things which most lawyers believe to be the unauthorized practice of law. They drafted and proposed a licensing statute which was introduced in several legislatures. They intervened in nearly all of the important cases involving the unauthorized practice of law. It resulted in antagonism and friction between realtors and lawyers throughout the country, which not only affected the unauthorized practice of law field but which was carried over to other fields. The public press was distinctly unsympathetic with our contention, and the courts were by no means uniform in upholding the Bar's contention on this matter.

"Finally, after a series of conferences extending over several years, this 'Memphis Resolution' was finally agreed to, in May of 1942. This resolution attempted to outline a statement of general principles designed to settle the controversial points which arose between lawyers and realtors, including the particularly difficult question of the use of printed forms by realtors. It also set up machinery and procedure for the settlement of future disputes which might arise between these two groups. It was a 'peace treaty' designed to end a conflict between two important groups in American society. The intention was that it should serve as a basis for more specific agreements between the bar associations and the real estate boards in each community.

"The Chicago Bar Association has always had an active and effective Unauthorized Practice Committee, and has done some very excellent work along this line. They considered the matter at great length.

"In the light of their experience, they found it impossible to reconcile some of the statements with their policies and beliefs. So they took the action which is before you."

Further Progress Achieved by the Board of Governors

Mr. Mitchell then narrated the extended consideration of the whole matter by the sub-committee of the Board of Governors, the conferences had with representatives of the conflicting points of view, and the changes drafted by the sub-committee to meet objections raised by the Chicago Bar Association, concurred in by the Illinois State Bar Association, and by others, "some of which were felt to be meritorious, except the objection to the use of printed forms by realtors." He announced to the House that the National Conference Group of Realtors and Lawyers, set up under the "Memphis Agreement," had met in the Hotel Drake the day before, and had unanimously approved *verbatim* the changes worked out by the Board of Governors, "even though they went further than the original agreement. We hope, therefore, that the issue has now narrowed down to the simple question of whether or not the Board of Governors and the House of Delegates shall reaffirm our previous action in approving the provisions of the 'Memphis Agreement' permitting the realtors to fill in the factual data on printed conveyancing forms which have been approved by local bar associations. Our Board of Governors recommends that this approval be reaffirmed.

"Our sub-committee and the Board of Governors believe that this compromise is a wise one. One of the most difficult unauthorized practice questions is this question of the use of printed forms by realtors. Whichever way you decide it, there are dangers and disadvantages. On the one side there is the danger that the unrestricted use of printed forms by laymen may result in a failure to express the intention of the parties. It may therefore be injurious to the public. On the other hand there is the certainty that if the use is entirely prohibited, then every instrument in every real estate transaction will have to be drawn by a lawyer. This, of course, is impractical, and we don't believe that the public will stand for it.

Advantages of Practicable Compromise Are Stated

"This compromise which is contained in the 'Memphis Resolution' concedes to us many of the things which the realtors had heretofore aggressively contended for, such as the right to draft complete instruments in any real estate transaction. That is, it concedes on their part that this cannot be done and they also concede that they may not appear for their clients before administrative boards. They have heretofore contended for the right to do that.

"The compromise is also in line with recent court decisions on the subject. The Ohio Supreme Court, which has been one of the most outstanding courts in upholding the lawyers' contention against the unauthorized practice of law, first held that the preparation of instruments by real estate brokers constituted the practice of law. However, when a later case presented to them the situation where the printed form which was prepared by the realtor's attorney had simply been filled in by the broker, they held that this was all right and was not the unauthorized practice of law. This compromise is along the lines of the Ohio Supreme Court's decision.

"Admittedly it is a compromise, but it seems to be one which is not only in the interest of the public, but also is in the long-range interest of the Bar. If abuses develop in the application of the principles, as is contended by the Chicago Bar Association that there will develop, then they can be taken up and ironed out with the Realtor Group by the National Conference. The machinery is always there for handling these disputes.

"The effort to settle the matter amicably by friendly negotiations with the realtors seems to us to be infinitely preferable to bitter litigation and possibly adverse legislation which might very conceivably lead to laws or decisions which open the gates very wide to the doing of many things by realtors which are prohibited by the present agreement. The bitterness between two important bodies such as this might also have collateral consequences which would be most unfortunate.

"This is no time to carry our efforts to preserve our exclusive right to practice law to lengths which interfere with ordinary business transactions and which the general public would regard as excessive and absurd. History is replete with examples where attempts by individuals and nations to overreach and grab everything for themselves have boomeranged and resulted in their getting nothing. The present world conflict seems about to produce another example of the results of such overreaching and greed. Let us resolve that the organized Bar will not produce another example of such overreaching."

Substitute Resolution Is Offered by Chicago Bar Association

In accordance with the action of the Board of Governors Mr. Mitchell thereupon moved that the action of the Board in reaffirming Sections 1 and 2 of the "Memphis Resolution" be approved by the House. On motion of Chairman Barkdull of the Rules Committee each the Chicago Bar Association and the Committee on Unauthorized Practice were voted to have two speakers, with each speaker limited to ten minutes.

Mr. Harry Gottlieb, a former president of the Chicago Bar Association, moved the following substitute for Mr. Mitchell's motion:

"Whereas, On May 5, 1942, the Standing Committee on Unauthorized Practice of the Law of this Association and the Committee of the National Association of Real Estate Boards met at Memphis and adopted a general resolution (referred to as the 'Memphis Resolution') prescribing certain 'principles' applicable to the conduct of realtors and lawyers in connection with real estate transactions, which principles may be summarized as follows:

"(1) The realtor shall not practice law or discourage any party to a real estate transaction from procuring the services of a lawyer;

"(2) The realtor shall not undertake to draw or prepare documents fixing and defining legal rights of parties except as follows:

"The realtor may use an 'earnest money contract form for the protection of either party against unreasonable withdrawal' provided that that form, as well as other 'standard legal forms' used by the broker in transacting such business shall first have been approved or promulgated by the local bar association;

"(3) The realtor shall not participate in the lawyer's fees;

"(4) The realtor shall not in any way seek to influence the lawyer's compensation;

"(5) The lawyer shall not express any opinion concerning the business prudence of real estate transactions unless his client asks for such opinion;

"(6) The lawyer shall not seek to participate in the realtor's commissions;

"(7) The lawyer shall not in any way seek to influence the realtor's compensation;

"(8) The lawyer engaging in real estate business must take out a license;

"(9) A National Conference of Realtors and Lawyers shall be created consisting of five realtors appointed by the President of the National Association of Real Estate Boards and five lawyers designated by the chairman of the Unauthorized Practice Committee of this Association;

"(10) The National Conference shall in general seek to simplify forms, exchange information, consider controversies between realtors and lawyers, issue further statements of principle, and act as adviser to state and local bar associations and real estate boards in making effective the principles of the resolution; and

"Whereas, The 'Memphis Resolution' was approved by the Board of Governors of this Association on May 12, 1942, only seven days after its promulgation; and

"Whereas, The Board's report containing the approval of the 'Memphis Resolution' was adopted by the House of Delegates in August, 1942; and

"Whereas, There is now before this House of Delegates a report of the Board of Governors relating to the 'Memphis Resolution,' which report refers to a resoultion of the Chicago Bar Association—also adopted by the Illinois State Bar Association—disapproving the 'Memphis Resolution' and recommending its rescission by this Association; and

"Whereas, In said report, the Board of Governors concurs in substantially all of the objections raised by said resolution of the Chicago Bar Association and of the Illinois State Bar Association, except the objections to the provisions of the 'Memphis Resolution' authorizing the preparation by the realtor of contracts preventing 'unreasonable withdrawal' of either party from a transaction, thus necessarily containing all the terms of the contract between the parties for the purchase and sale or leasing of real estate, and further, permitting the realtor (a) to select such legal forms as the realtor may believe to fit the particular transaction (provided such forms are approved by the local bar associations); and (b) to make such changes in those forms, factual or otherwise, as the realtor may deem necessary; and

"Whereas, This Association by approving said selection and use of forms by realtors would nullify much of the work that has been accomplished by this Association and other bar associations throughout the United States in protecting the public against the evils resulting from the unauthorized practice of law; and

"Whereas, The provisions of the 'Memphis Resolution' above referred to, relating to the preparation of contracts by realtors are inconsistent with the principles set forth in the widely published statement of the Committee on Unauthorized Practice of the Law of this Association issued February 1, 1940 (Vol. 26, A.B.A.J., p. 341) reading as follows:

"It is argued that real estate brokers should be permitted to do the things proposed in the interests of expediency, convenience and in order that they may close transactions themselves without delay or hindrance, and so that they may be assured of their compensation for hav-

ing brought the parties together. . . .

"The Committee believes that every legitimate protection should be given to the real estate broker who has earned a commission by bringing the parties together, but at the same time reiterates its opinion that it is improper for a real estate broker:

"(1) To practice law or give legal advice, directly or indirectly.

"(2) To furnish legal advice or perform legal service, directly or indirectly, or to represent that he is competent or equipped to do so.

"(3) *To select, adopt, adapt, draft, shape or otherwise prepare any instruments* having to do with the consummation of any real estate transaction, whether or not the said broker was instrumental in bringing about the transaction.

"(4) To give advice or opinions as to the legal effect of any instrument involved in any real estate transaction or to prepare or give opinions concerning the validity of title to real estate.

"(5) In any way, to prevent or discourage any party to a real estate transaction receiving disinterested and qualified legal advice from any attorney duly authorized to practice law.

"Now, therefore be it

"RESOLVED, By the House of Delegates of the American Bar Association:

"(1) The action of this House in August, 1942, adopting the report of the Board of Governors, in so far as it approves the 'Memphis Resolution,' is rescinded.

"(2) The Committee on Unauthorized Practice is authorized and directed to confer with the National Association of Real Estate Boards with respect to substitution for the principles laid down in the 'Memphis Resolution' of a Statement of Principles embodying in general the following:

"(a) A general prohibition against practice of law by realtors;

"(b) A general prohibition against the acceptance by realtors of any part of the lawyer's fee for services rendered in connection with a real estate transaction and a like prohibition against the acceptance by lawyers of any part of the realtor's commission for services relating to such transactions;

"(c) The formation of a National Conference of Realtors and Lawyers to meet periodically for the purpose of studying and recommending the adoption by their respective national associations of

"(i) Means for simplification of laws and procedure governing real estate transactions and the reduction of the cost thereof;

"(ii) Rules and regulations for the elimination of detrimental practices arising in connection with the taking of expert testimony on valuation in litigation involving the value of real property;

"(iii) Methods for maintenance of a constant exchange of information concerning any practices on the part of their members which may be detrimental to the public or to the purpose of either Association;

"(d) A provision for consideration, in an advisory capacity, by said National Conference of any controversy between realtors and lawyers that may be referred to it and for formulation and submission by said National Conference to the respective national associations of such further proposals for guidance of their members as they may deem to be in the public interest."

Debate by Representatives of the Opposing Views Ensues

After the foregoing resolution had been seconded, the first speaker for the Chicago Bar Association was Mr. S. Ashley Guthrie, who outlined and argued the points of objection to the "Memphis Resolution." He protested especially the filling in of printed forms by realtors, in many situations which require a lawyer's judgment and advice.

He was followed by Mr. Alfred R. Bates, also in support of the attitude of the Chicago and the Illinois Bar Associations. Mr. Bates dealt with and demonstrated specifically some of the legal questions arising upon a realtor's use of printed forms.

Chairman Otterbourg, for the Committee, replied to the contentions of Messrs. Guthrie and Bates. The argument for the Committee was continued by Mr. David F. Maxwell, of Pennsylvania, as chairman of the Pennsylvania Bar Association's Committee on the Unauthorized Practice of the Law. Space does not permit the reporting or summary of the detailed arguments made by the four designated spokesmen of the respective sides.

Mr. George E. Brand, of Michigan, moved, as an amendment or substitute for the Chicago Bar Association's proposal, "that the effectiveness of the approval by the Board of Governors and of the House of Delegates of the second sentence of division 2 of Article I of the so-called Memphis statement be suspended, and that the subject-matter thereof be further considered by the Unauthorized Practice of the Law Committee, with a view to eliminating therefrom, if possible, the basis of any reasonable objection that the statement contemplates the possible approval by bar associations of unauthorized practice of the law.

After Mr. Brand's substitute had been seconded, he spoke in support of his motion. "I have every reason to believe," said he, "that if this matter is further considered the objectionable portion of the Article to which I have referred will be removed."

Chairman Crump ruled that the proposal was in the nature of a substitute for the pending substitute, and so was out of order while the latter was pending.

Former President Lashly and Judge Miller Ask Support of the Committee

Former President Jacob M. Lashly, of Missouri, expressed his belief that the Chicago Bar Association had rendered a service in pointing out objections which the Board of Governors had been able to remedy, but he urged that the House ought not to withdraw support from its Committee.

He was followed by Judge Frederic M. Miller, of the Supreme Court of Iowa, who told of that Court's con-

sideration of problems of unauthorized practice of law in this field. "To rescind the 'Memphis Resolution' cuts the ground from under us," he said. "I think it would be ill-advised to rescind everything the Committee has done. If Section 2 requires clarification, I am sure these men are open-minded and will continue to work to clarify it."

Former President Charles A. Beardsley, of California, referred to the formation of the Committee, thirteen years ago in Chicago, by vote of the Association. "I hope we defeat this Chicago resolution," he declared.

Resolution of the Chicago Bar Association Is Defeated

After Mr. Gottlieb had closed the debate in support of his substitute resolution, the latter was put to a vote and was defeated by the House. Mr. Brand did not then re-offer his proposed substitute.

The motion offered by Mr. Mitchell, for the Board of Governors, was then put to a vote. "Unanimously adopted," Chairman Crump announced.

Mr. Mitchell thereupon moved further

> That the House of Delegates approve the changes made in the "Memphis Resolution" by the National Conference of Realtors and Lawyers on August 24, 1943, which changes are identical with those proposed in the supplemental, special report of the Sub-committee on Committees of the Board of Governors, which have been heretofore submitted to the members of the House.

This motion was put to a vote and was carried by the House.

Report of the Committee on Improving the Administration of Justice

Judge John J. Parker, of North Carolina, member of the United States Circuit Court of Appeals for the Fourth Circuit, gave the report of the Committee on Improving the Administration of Justice. He offered a resolution:

> RESOLVED, That the American Bar Association continue to recognize the immediate importance of the work of the Special Committee as a part of the wartime program of the Association.

This motion was put to a vote and was carried without opposition.

Report of the Committee on Civil Service as to the McKellar Bill Is Taken Up

Mr. Murray Seasongood, of Ohio, gave next the report of the Committee on Civil Service. He first moved that the recommendation of the Committee as to the McKellar bill (S. 575), to require confirmation by the Senate of appointments to specified classes of federal employees, be taken from the table by the House, which had voted to table the matter last March (A. B. A. J., May 1943 issue, p. 295).

Secretary Knight reported that the Board of Governors had approved the recommendation to take the subject-matter from the table, "but the Board expresses no opinion upon the merits of the resolution which was tabled, and calls the attention of the House to the following comment made by the Board at the March meeting, 'that passage of this resolution is beyond the jurisdiction of the House except in so far as it relates to federal employees concerned with the administration of justice who are under the classified civil service.'"

In view of the lateness of the hour, the report was deferred, with Chairman Seasongood's approbation, to the opening of the Thursday session of the House.

The report and supplemental report of the Committee on the Economic Condition of the Bar was ordered received and filed, the Committee having withdrawn its original recommendation.

Renegotiation and Termination of War Production Contracts Is Reported On

Mr. Louis A. Lecher, of Wisconsin, chairman of the Committee on Commerce, made an informative report as to the changing status of various matters related to the renegotiation, termination, etc., of war production contracts and their relationship to federal tax questions.

Inasmuch as the Committee submitted no definitive recommendations at this time, the report and supplemental report were ordered received and filed.

In view of the prospect of recommendations by the Sections on Taxation and on Real Property, Probate and Trust Law, which were not submitted to the Board of Governors for consideration and comment, Chairman Crump appointed, as a House committee to consider those reports, Mr. Pike Hall, of Louisiana, chairman, Mr. Charles M. Hay, of Missouri, and Judge Robert McC. Marsh, of New York.

The New Librarian of the Law Library of Congress Is Presented

President Morris introduced to the House Mr. Eldon R. James, "the new Law Librarian of Congress, successor to Mr. John T. Vance, a beloved member." In giving his report for the Committee on the facilities of that Law Library, Mr. James said, in part:

"The report concerns itself with an event which is of tremendous importance to the Law Library of Congress, and I think is of very great importance to the Bar as a whole. On April 11, Mr. John Vance, who had been Law Librarian of Congress since 1924, died as the consequence of an operation. John Vance, when he came to the Law Library of Congress in 1924, found an appropriation of $3,000 a year. When John Vance died Congress had been appropriating $90,000 and $95,000 a year for the purchase of books. When John Vance came to the Library of Congress he found about 220,000 volumes. When he died he left it a very greatly increased library of 600,000 volumes.

"The report is a tribute to John Vance and to the great work which John Vance did. I am very happy to appear before you to present this report and to make these very few remarks about a man who was a very great public servant."

Mr. Tweed Reports as to Current Aspects of Legal Aid

Chairman Harrison Tweed. of New York, declared that his Committee on Legal Aid "is in its usual dilemma of trying to accomplish the

impossible all at once. There is one thing that we have failed to do which this Association asked us to do, and that was to get passed by Congress the so-called Public Defender Bill whereby the poor in criminal courts in federal jurisdiction would receive support and representation by a public defender. That bill has been stalled in Congress by reason of the fact that Congress thinks that it has much more important things to do, and I for one have got to agree with Congress on that point.

"There is, however, another bill in Congress which has to do with the poor in criminal courts and in the civil courts in this respect; that is, it calls for a stenographic report of all proceedings in the federal courts at the expense of the government where the litigant is unable to pay the expenses of that stenographic service. That bill seems to be booming and apparently is going to pass in Congress.

"In doing the major bulk of the representation of men in the service, the Legal Aid Societies throughout the country, which have been established in the past and functioning in peace as in war, are carrying a fair share of their burden. In the last six months the Legal Aid Societies have taken care of 16,000 applications from men in the service."

Recommendations of the Committee on Aeronautical Law Are Approved

In the absence of Mr. Royce G. Rowe, of Illinois, chairman of the Committee on Aeronautical Law, its report was made by Lieutenant-Colonel Samuel E. Gates, a member of the Committee. He first moved the adoption of its recommendations Nos. 1, 3 and 4, which were along lines previously approved by the House:

(1) That the Committee be instructed to continue the study of the subject of civil aviation liability; that it should, if possible, present a condensation of the Sweeney Report and endeavor to state conclusions which may reasonably be drawn from the data therein collected; that it continue to cooperate with the Civil Aeronautics Board and all other interested agencies in the development of appropriate legislation and report to the Association its views as to legislation to be sponsored.

(3) That the Association should renew its approval of Senate Bill No. 14, (formerly No. 7) relative to aviation salvage at sea, with an amendment empowering the Civil Aeronautics Board in its discretion to relieve specified aircraft owners or operators from obligation of assistance to those in distress at sea for specified periods, not exceeding three years.

(4) That the Association reindorse the principle of an Act by Congress authorizing suits against the government on claims for injury and damage caused by aircraft operated by the government or any of its agencies or under its control or direction; and approve the bill annexed to this report drafted by the Committee to effectuate this policy, and authorize the Committee to cause the same to be introduced into Congress and to urge the passage of the same before the appropriate committees of Congress.

Recommendation No. 2 was next explained, moved and adopted, as follows:

(2) That the American Bar Association endorse the principle that (a) maximum development of the air commerce of the nation is in the public interest; (b) uniformity of law and regulation of such air commerce, including its economic, and safety regulation, control and the certification of aircraft and airmen, is necessary to bring about its maximum development; (c) such uniform regulation and control can only be accomplished through federal legislation; (d) the declarations of principles and policies stated in H.R. 1012 (committee print No. 2, dated May 26, 1943) of federal control of all air commerce to the exclusion of state control of a contrary, duplicating or otherwise burdensome nature are in accord with the announced policies of the American Bar Association.

Recommendation No. 5 was likewise explained and moved by Colonel Gates, and adopted by the House, as follows:

(5) That the Committee be instructed to engage in the study of the question involving a post-war policy as stated in the attached report, to cooperate with the Section of International and Comparative Law respecting the same, and to report from time to time on such matters as are ready for report; and, with the prior consent of the Board of Governors, to present its views and recommendations to departments and agencies of the government engaged in the consideration of such problems.

Recommendations by the Committee on Law Lists Are Adopted

Chairman Cushman B. Bissell, of Illinois, for the Committee on Law Lists, commented on and moved its recommendations, as follows:

Authorizations and Directions to the Special Committee on Law Lists:

(1) After due investigation, to make findings of fact as to the reputability within the meaning of Canon 27, of law lists reported to be operated in a manner which encourages violation by members of this Association of the Canons of Ethics, or in a manner which is inconsistent with the provisions of the Rules and Standards as to Law Lists.

(2) When requested in writing, to advise any member of this Association making such request, of the name of any law list which it has so found not to be reputable within the meaning of Canon 27.

Authorizations and Directions to the Professional Ethics and Grievances Committee:

(1) To give notice of such findings to members of the Association listed in any list so found by the Special Committee on Law Lists not to be reputable within the meaning of Canon 27.

(2) After written notice has been given to any member of this Association and reasonable opportunity afforded such member to discontinue listing in a law list so found by the special committee not to be reputable within the meaning of Canon 27, to institute disciplinary proceedings for failure to discontinue such listing.

The Secretary stated that these recommendations had been transmitted to the Board of Governors "without comment." The following ensued:

"MR. WILLIAM C. MASON (Pennsylvania): Is the word 'reputable' or 'recommended.' My recollection is that had been a matter of discussion sometime in the past. For the Committee to determine the reputability of a law list I think is something that ought to be given rather serious consideration. I am inquiring now whether the word is 'reputable' or 'recommended.'

"MR. BISSELL (Illinois): The authority requested is that the Law

Lists Committee be authorized to determine that certain law lists are not reputable within the meaning of Canon 27 and the Rules and Standards as to Law Lists.

"MR. MASON: Am I to understand that they were given authority to notify each member of the Association that this or that list is not reputable?

"MR. BISSELL: They have not been given that authority.

"MR. MASON: Are you asking for it?

"MR. BISSELL: Yes.

"MR. MASON: That is the reason for my question. I understood that in the past the position which was taken was that the list was either recommended or not recommended, and the reasons for recommending or not recommending were not necessarily given. I may be in error in that, but at least we now have the issue before us.

"MR. STANLEY (Kansas): Mr. Bissell, I would like, in line with the remarks that were just made, to have you explain, because I think it should have the consideration of the House, as to why you use the word 'reputable.'

"MR. BISSELL: It is a Canon.

"MR. STANLEY: You are merely adopting the Canon?

"MR. BISSELL: Fundamentally a lawyer is prohibited from advertising. The Canon, however, creates an exception to that fundamental rule and permits the carrying of a lawyer's card in a law list if it is a reputable law list. We are authorized under the Rules and Standards as to Law Lists to determine, on the application of publishers who make application, whether or not a list is reputable, and if it is reputable we issue to it a certificate of compliance. There are certain publishers who do not apply to this Association. There are publishers who are not reputable."

The recommendations of the Committee on Law Lists were thereupon put to a vote, and were adopted by the House.

Recommendations by the Committee on Professional Ethics and Grievances Is Approved

Judge Orie L. Phillips, member of the United States Circuit Court of Appeals, reported as chairman of the Committee on Professional Ethics and Grievances. Concerning its one proposal for the action of the House, Judge Phillips said that "We recommend an amendment to Canon 27, to change it so as to permit the inclusion, in the brief biographical and informative data published in reputable law lists, of the names and addresses of references. That permission was once in the Canons but in the ramifications which have taken place with respect to Canons 27 and 43 it was omitted, I think inadvertently. The Law Lists Committee and your Committee on Professional Ethics and Grievances and *ex officio* on Canons think it should be put back."

Judge Phillips accordingly moved the adoption of the following recommendation, which was put to a vote and carried:

> We recommend that the House of Delegates amend Canon 27 of the Canons of Professional Ethics by inserting after the word "lists", and before the word "and" in the next to the last sentence of the Canon, the following: "the names and addresses of references"; so that the Canon will read as follows:
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> "It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.
>
> "Publication in reputable law lists in a manner consistent with the standards of conduct imposed by these canons of brief biographical and informative data is permissable. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended, with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of listings in other reputable law lists; *the names and addresses of references;* and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Special Committee on Law Lists may be treated as evidence that such list is reputable."

On motion of Chairman Barkdull of the Rules and Calendar Committee, the House recessed at 5:35 o'clock, until Thursday afternoon.

House of Delegates—Third Session

The concluding convocation of the House found itself struggling against time with more business of importance than it could dispatch with adequate debate. The Committee on Jurisprudence was charged with the duty of studying and reporting on improvements in the law of evidence for the federal courts in connection with forthcoming consideration of Rule 43 and other Rules of Civil Procedure. The House voted opposition to the proposed decrease from six to five in the required "quorum" in the Supreme Court of the United States. The House favored the perfecting of appeals as of right, through a notice of appeal, in the Supreme Court of the United States. A broadened program of action to curb abuses in administrative law and procedure was approved and applauded. The House reversed its action last March, by taking from the table and adopt-

ing a resolution opposing the McKellar bill (S. 575) to require Senate confirmation of numerous appointments to the federal Civil Service. Reinstatement of striking public employees was opposed. A notable report as to the history and statistics of Association membership, with plans for further increase, was given by Director David A. Simmons. A proposal to try to devise improvements in the House calendar, to give more time for controversial matters, was approved. Several recommendations as to current problems of patent law were approved; others were referred to the Board of Governors with power to act. Comprehensive recommendations by the Section of Taxation were approved. Resolutions adopted by the "open forum" session of the Assembly were concurred in by the House, except one for the outlawing of strikes in war production industries, which was ruled out on a point of order. The Assembly action for study and report as to proposed "group medicine" under federal control was concurred in, with an added resolution of opposition to such a system. After a cordial resolution of appreciation to Chicago and Illinois hosts, the House unanimously elected the Association officers for the coming year, and belatedly adjourned.

THE House of Delegates met again Thursday afternoon, for its third and concluding session. The report of the Committee on Judicial Selection and Tenure, of which Judge John Perry Wood, of California, was chairman, and the report of the Committee on Judicial Salaries, of which Mr. William H. Watkins, of Mississippi, was chairman, were received and filed, as containing no recommendations requiring action by the House.

In the absence of Professor James W. Moore, of Connecticut, chairman of the Committee on Jurisprudence and Law Reform, Mr. Albert E. Jenner, of Illinois, a member of the Committee, was granted leave to present its report and a supplemental report. Concerning its action as to its four proposals of legislation, previously approved by the House of Delegates, Mr. Jenner reported that the Congress has the bill to permit the transfer of circuit judges throughout the country from circuit to circuit in order to permit one circuit, temporarily overloaded with business, to have aid from another circuit which is not so busy.

Concerning the Committee's recommendation, approved by the House of Delegates, that the Advisory Committee on Rules of Criminal Procedure appointed by the Supreme Court of the United States should be continued at least during 1943 and 1944 and given the task of reviewing the Rules and making recommendations to the Court as to their revision, Mr. Jenner reported that the Advisory Committee had been reappointed by the Court and will report this fall on proposed changes in the Rules, which proposals will be submitted to the Bar. One of the matters under consideration has been a revision of Rule 43 as to evidence, but it is unlikely that a full report on it can be made this year. Mr. Jenner said that the Association's Committee favors dealing with the subject through rules of Court rather than by legislation.

Recommendations as to Rule 43 Concerning Evidence Are Adopted

On behalf of his Committee, Mr. Jenner submitted the following recommendations of its report:

(1) That the Committee on Jurisprudence and Law Reform be specially charged with the duty and task to study the need for improving the law of evidence for the federal courts;

(2) That the Committee report its findings and recommendations at the next annual meeting;

(3) That as a basis for its report the Committee consider any relevant proposals by the Supreme Court's Advisory Committees on Rules of Civil and Criminal Procedure, recommendations by state and other local bar associations after consultation and discussion, the American Law Institute's Model Code of Evidence, Dean Wigmore's Code of Evidence, and such other writings, opinions and advice of jurists, practitioners and teachers as may prove helpful in determining the desirability of evidential reform and its course and content.

On motion of Mr. James P. Economos, of Illinois, the recommendations were put to a vote and were adopted.

Recommendations of Supplemental Report as to a "Quorum" in the Supreme Court Are Adopted

Mr. Jenner then presented and discussed the recommendations of the Committee concerning the proposed legislation, now pending in Congress, to reduce from six to five the number of justices required for a "quorum" in the Supreme Court of the United States, and also concerning a possible change in the appellate procedure of that Court with respect to the perfecting of appeals to that Court as of right.

Concerning the Committee's first recommendation, Mr. Jenner said that "The Committee concludes that the legislation is constitutional, but your Committee is of the opinion that the legislation is unwise and is in the nature of *ad hoc* legislation to permit consideration of not to exceed three cases now pending. Your Committee feels it would be unwise to change the quorum of the Court in this major respect, for the purpose of considering those two or three cases. The net result of reduction of the quorum from six to five would be to permit three justices of the Court of nine to decide any particular case before it, provided of course the quorum was reduced from nine to four by disqualifications."

As to the present procedure for taking appeals to the Supreme Court as of right, Mr. Jenner stated that some recent events bring forward two important questions: "Is there a weakness in the present system of perfecting appeals of right in the United States Supreme Court, and if so, what recommendations should this body make with respect thereto? We feel that the first question should be answered in the affirmative, and we recommend that the cure as we feel should be by way of perfecting appeals of right by notice of appeal in the same manner as appeals are perfected in other civil cases in the federal courts."

Mr. Thompson, of Illinois, moved the adoption of the Committee's first recommendation, as follows:

> That a quorum of the United States Supreme Court shall continue to be six. That proposed legislation which would reduce this number be not enacted.

For the Committee on Draft, Chairman Charles E. Lyman, of Connecticut, stated that it favored the adoption of the recommendation. Former President Walter P. Armstrong, of Tennessee, called attention to the statement, in the body of the supplemental report, that "Your committee suggests that legislation along the lines of that proposed by Representative Kefauver (H. R. 2926) is preferable. He proposes to authorize the designation of retired justices for service on the Court when necessary to obtain a quorum." Mr. Armstrong inquired "whether or not the approval of this report would carry with it approval of that suggestion?"

Chairman Crump ruled that approval of the submitted recommendation of the Committee would not carry with it approval of a suggestion made in the body of the report.

"MR. FRANK W. GRINNELL (Massachusetts): I wish to ask whether it would be possible to allow the Court of five to sit and decide if they were unanimous? In that way, without changing the usual quorum, it would make it possible to have certain cases heard.

"MR. JENNER: I may say this with respect to each of the suggestions: You will note that the report suggests that this general subject perhaps be called to the attention of the appropriate gentlemen in Congress, and that those suggestions might be considered as alternatives; but the Committee has not itself considered the alternative of a unanimous opinion of five, and I couldn't express the opinion of the Committee on that subject."

The first recommendation of the supplemental report was adopted by the House. Mr. Floyd E. Thompson, of Illinois, moved the adoption of the second recommendation, as follows:

> That an appeal to the United States Supreme Court should be perfected by filing a notice of appeal, within the statutory time, with the court from whose judgment the appeal is taken.

Chairman Lyman, for the Committee on Draft, reported that it "recommends that that be also adopted. However, there is a suggestion in the body of the report that ultimately legislation may result as a part of this, and it thinks that the chairman of the Committee, who is not a member of the House and not perhaps familiar with our rules and procedures, should be reminded that in the event of a bill coming up, the acceptance of this recommendation is not an approval of any specific legislation."

The second recommendation of the supplemental report of the Committee on Jurisprudence and Law Reform was adopted by a vote of the House.

Committee on Administrative Law Submits a Program for Action

Chairman Carl McFarland, of the District of Columbia, presented first the report of the Committee on Administrative Law, which reviewed recent developments, but contained no recommendations. It was ordered received and filed. After referring to the recurring importance of the subject as attested by the address of President Morris Monday forenoon, Chairman McFarland gave a supplemental report which asked "the permission of the House to make one change in its method of handling legislation.

"You all will recall that heretofore the Association has adopted a declaration of principles respecting federal legislation in the field of administrative justice," said Chairman McFarland. "You are also aware of the various legislative proposals in the past which have been urged. The war has put a damper on some of that type of activity for the last two years, but the situation is quite evidently changing, and we now are in need of two things. First, we desire to formulate and present to the Association a set of model administrative law provisions. That of course is anticipatory. For two years the Committee on Administrative Law has been attempting to formulate a workable type of legislation, and it appends to its supplemental report a tentative draft of that type of legislation. The Committee does not ask your approval at this time. What it does ask further is that when the approval is given to the form of legislation—I assume that approval will be given by the Board of Governors if the materials are ready in time—what the Committee asks is that it be allowed to make recommendations to Congressional committees in line with the general formula as and when finally approved. In other words, it asks permission of the House to take the general principles that have heretofore been adopted by the Association, and which we hope to have adopted in definite legislative draft form soon, and adapt those to individual agency legislation as it comes before the Congress.

"The Association and the Committee would not be doing their job if they confined their efforts to the attempt to secure some comprehensive type of reform. There should be no objection to allowing the Committee to utilize the principles and the legislative forms approved by the Association, to make specific recommendations within those authorities to Congressional committees."

The comprehensive report and recommendations were heartily applauded as evidencing the renewed purpose of the House and the Association to do all in its power to give practical effect to the earnest plea made by President Morris' address at the opening session of the 1943 Assembly.

The House Approves Recommendations for Action Against Administrative Abuses

Chairman McFarland then moved, and the House voted to approve and adopt, the Committee's recommendations for the authorization of action by the Committee as follows:

> (1) Prepare and submit, for the consideration and approval of the Board of Governors, proposals for

general federal legislation respecting the basic problems and requisites of fair administrative procedure; and

(2) Upon the approval of the foregoing general proposals, (a) publicize the proposals and take all necessary steps to secure their consideration and adoption, and (b) within the scope of the general proposals as approved, make special recommendations to Congressional committees with reference to legislative action in connection with specific administrative agencies or powers as may arise.

Debate as to the McKellar Bill Affecting the Federal Civil Service Is Resumed

The special order of business for the session was next taken up. Chairman Murray Seasongood, of Ohio, for the Committee on Civil Service, spoke in favor of declaring opposition which would require Senate confirmation of many appointments to positions in the federal Civil Service.

Former President Beardsley, of California, made the point of order that the Committee's resolution was not within the scope of the objects and the action authorized by the Association's Constitution. The point of order was briefly debated, for the information of the Chair, by Mr. Grinnell, of Massachusetts, Mr. John Kirkland Clark, of New York, and Mr. Seasongood, of Ohio. Chairman Crump then ruled that "the point of order is not well taken."

Mr. William Logan Martin, of Alabama, spoke in opposition to the Committee's recommendations, along lines which he urged upon the March meeting of the House (A.B.A.J., May 1943 issue, p. 296). Mr. Edward J. Dimock, of New York, and Mr. Clark, of New York, urged support of the recommendations.

Debate Ends in Approval of Recommendation Against McKellar Bill

Mr. Floyd E. Thompson, of Illinois, moved to add to the recommendation the words "in so far as such legislation applies to employees engaged in the administration of justice." This amendment was seconded, put to a vote, and defeated by the House.

Mr. Sylvester C. Smith, Jr., of New Jersey, spoke in opposition to the recommendation, and stressed its inclusion of the phrase "or any similar bill" as within its condemnation. He urged that the House confine its action to a declaration of principles, as proposed in the Committee's fourth recommendation, apart from the collateral issues with which this bill has been surrounded.

Mr. Frank H. Haskell, of Maine, a member of the Committee, stated his reasons for joining in the recommendation for a declaration against the McKellar bill. Mr. Seasongood closed the debate.

A rising vote was then taken on the Committee's second recommendation, which read as follows:

> RESOLVED, That the American Bar Association oppose passage by the Congress of the McKellar Bill (S. 575) as amended and passed by the Senate June 14, 1943, or any similar bill, as constituting an assault on the federal merit system, now in its sixtieth year, and call on all persons interested in the merit system to unite in opposition.

The poll of the House showed 64 votes in favor of the recommendation and 25 votes in opposition to it.

The recommendation was declared to have been adopted.

Reinstatement of Strikers in the Public Service Is Opposed

Chairman Seasongood then moved his Committee's third recommendation. He accepted an amendment suggested by Mr. Loyd Wright, of California, to substitute the words "should dismiss" for the words "are justified in dismissing," so that the recommendation as put to a vote read as follows:

> RESOLVED, That civil service commissions should dismiss appeals for reinstatement of public civil service employees who have gone on strike, on the ground there is no right to strike in the public service.

This recommendation was adopted by the House, as was also the Committee's fourth recommendation, which read as follows:

> RESOLVED, The civil service merit system should not be curtailed or abandoned in war periods.

Dispatch of Business Is Expedited Under Pressure as to Time

With a heavy calendar of business still undisposed of and the necessity of ending the session in time to permit the holding of the final session of the Assembly and also the clearing and resetting of the room for the Annual Dinner, Chairman Crump appealed for the cooperation of the members of the House in facilitating the completion of its work.

Chairman Barkdull of the Rules and Calendar Committee moved that under the urgent circumstances, all remaining reports of Sections and committees which contain no recommendations be ordered received and filed, without the personal appearance of the chairmen. This was voted. The House thereafter conformed itself to the necessity of completing its calendar virtually without debate.

Notable Study and Report as to Association Membership

Mr. David A. Simmons, of Texas, Director of Membership, gave a short summary of the voluminous study and analysis which he made, concerning the Association's membership history since 1878. The Association has a steady increase of about 100 per cent per decade for the first twenty years, then about 200 per cent per decade down to ten or fifteen years ago. With the much larger membership the ratio of increase has, during the depression and the war, dropped; during the decade ending this year, the increase was 2.7 per cent. Mr. Simmons attributed the years and periods of marked growth to the leadership of strong, well-known men who worked hard to increase the membership.

Director Simmons emphasized the importance that each member of the House shall individually ask many qualified lawyers to apply for membership. "The figures show much greater effectiveness for letters of invitation when you men of the House sign or join in the letters," said Mr. Simmons. "We ought to build the Association to 50,000 members within a reasonable number of

years, or else move out and let some one else do it. If we do not succeed, it will be no one's fault but our own."

Distinguished Guests Are Chosen Honorary Members of the Association

Chairman Crump next recognized Mr. Robert Maguire, of Oregon, to present a motion which met with unanimous approval. "Incident often becomes the father of tradition," declared Mr. Maguire. "Many years ago the then officers of this Association felt that the Annual Meeting, then about to be held, would be both strengthened and brightened were it graced by the attendance of a representative of the bench and bar of England and by one from our neighborly brethren of the Dominion of Canada. So pleasant and successful was that venture that it became the practice, a practice so long and happily continued, that it has ripened into a rich tradition.

"We have been the fortunate host throughout the years of the leaders of these two great professional groups, and again this year there have been with us two splendid ambassadors of good will and fellowship. Of all the happy choices, none has been more happy than those made for our 1943 meeting. But we should not permit them to depart, leaving us only the pleasant memory of their presence. Let us clasp them to us by a tie more binding, so that they will be, in deed as well as in spirit, our brothers. Therefore, it is both my pleasure and honor to move the election, as honorary members of the American Bar Association, of The Right Honorable Sir Donald Bradley Somervell, Order of the British Empire, Member of Parliament, King's Counsel, and Attorney General of England, and of the Honorable C. Campbell McLaurin, Justice of the Supreme Court of the Province of Alberta."

The motion was heartily applauded as expressive of the warm personal feeling toward the distinguished visitors. It was unanimously adopted.

Recommendations as to Admiralty Law Are Adopted

In the absence of Chairman Herbert Bingham, of the District of Columbia, Mr. Morris Mitchell, of the Board of Governors, referred to what he termed "a concealed recommendation" in the body of the report of the Committee on Communications to the effect that "We respectfully suggest that the incoming Committee on Communications be directed to study S. 814 and be authorized to present the views of this Association to the Senate Committee on Interstate Commerce when hearings are held on said bill during the fall of 1943." With the concurrence of the chairman of the Committee, obtained by telephone, Mr. Mitchell moved that the report be received and filed, with this sentence deleted. This was adopted.

The House Committee, headed by Mr. Mitchell, to consider the report of the Committee on Admiralty and Maritime Law, presented by Chairman Carl V. Essery at the opening session Monday, advised approval of the Committee's recommendations. On motion of Mr. Mitchell, the first recommendation was adopted as follows:

> RESOLVED, That the American Bar Association disapprove H. R. 2972 and S. 1173, and that it authorize its Committee on Admiralty and Maritime Law to appear in behalf of the Association before the Committees of the Congress in opposition to these bills.

Also on the motion of Mr. Mitchell, the House adopted the second recommendation, as follows:

> RESOLVED, That the American Bar Association reaffirm its approval of S. 554, and approve the principle that the provisions of the bill should apply in cases of damage or injury caused by government-owned or operated vessels, whether merchant or public vessels, as well as in cases of damage or injury caused by privately-owned or operated vessels.

In order to expedite the business of the House, Mr. W. Eugene Stanley, of Kansas, moved that his report for the National Conference of Commissioners on Uniform State Laws be merely received and filed. This was done. The same course was taken as to the report of the Section of Bar Activities, on motion of its chairman, Mr. Charles E. Lyman. The report of the Junior Bar Conference, with Mr. Joseph D. Calhoun as chairman, was likewise filed.

Proposal To Study Improvement in Make-up of House Calendar

Mr. Willis E. Smith, of North Carolina, referred to the "rush period" in the House's dispatch of business, and suggested that "it ought to be possible for the work of this House to be conducted with a little more attention to the important matters and not so much attention to matters which are not controversial." He offered the following resolution:

> WHEREAS, The work of the House of Delegates has become exceedingly onerous by reason of the necessity of considering all committee and section reports to such an extent that insufficient time is allowed for attention to matters of great importance; now therefore be it
>
> RESOLVED, That it is the sense of the House of Delegates that the officers and members of the Board of Governors should study and if found practicable devise a plan to omit from the calendar those matters of a nature not controversial or of a policy-making nature or necessary for action by the House, with the report of such plan to be submitted to the House for its approval or rejection.

Chairman Crump pointed out that the making up of the calendar of the House was under the jurisdiction of its Committee on Rules and Calendar. He suggested that the Committee should at least participate with the Board of Governors in devising any plan for submission. Mr. Smith accepted the suggestion. Chairman Barkdull of the Rules and Calendar Committee seconded the motion as so amended. It was adopted by the House.

Chairman Barkdull moved also "that the question of the holding of a mid-year meeting of the House, and the determination of the time and place thereof, if held, be referred to the Board of Governors with power to act." This was stated to be essentially the same motion as

was adopted a year ago, in view of the difficulties in foreseeing the wartime conditions which might develop. The motion was adopted.

The report of the Section on Legal Education and Admissions to the Bar, with Dean Albert J. Harno, of Illinois, chairman, was received and filed. The same course was taken with the report of the Special Committee on Patent Problems, with the understanding that its one recommendation would be considered later.

Recommendations as to Patent Law Are Acted On

In presenting the first recommendation of the Section of Patent, Trade-Mark and Copyright Law, Chairman John Dienner, of Illinois, declared that the President's National Patent Planning Commission had "turned to the right," in the sense of "holding a patent essentially to be property and to be protected as such." The first recommendation was:

> RESOLVED, That the first report of the National Patent Planning Commission be approved in principle, but that detailed consideration and approval or disapproval by the Association of the individual recommendations of the Commission's program be deferred until legislative bills become available.

Mr. Pike Hall, of Louisiana, chairman of the House's special committee to consider the Section's report, advised that, as to each of the twelve recommendations, the Committee "passed on the language used and the form of the report, but makes no recommendation, affirmative or negative, in regard to the adoption of the report."

The first recommendation of the Section was adopted by the vote of the House. The second recommendation was as follows:

"RESOLVED, That the American Bar Association approve in principle H. R. 1372 amending R. S. 4915 (35 U. S. C., sec. 63) to provide for transfer of a timely suit thereunder, brought against all necessary parties known to plaintiff, to the court of the correct district in the event of subsequent discovery of an omitted necessary party or the inclusion of an unnecessary one."

Chairman Crump pointed out the Section's non-compliance with the Rule of the House requiring the submission of copies of any bill on which the House is asked to take action. Mr. Dienner pleaded "ignorance of the Rule," on his first appearance before the House. To help meet the situation, Chairman Crump suggested to Mr. Dienner that his motion might be to the following effect, which would be in order:

> RESOLVED, That the approval by the American Bar Association in principle of H. R. 1372, amending R. S. 4915, etc., be referred to the Board of Governors.

Chairman Dienner accepted the suggestion and moved the substitute resolution, which was adopted by the House. The Section's third recommendation was as follows:

"RESOLVED, That the American Bar Association disapprove H. R. 3006 providing for the grant of Social Patents covering any new and useful art of government or social facility."

For similar reasons, Mr. Dienner moved that this be referred to the Board of Governors, which was voted.

Recommendation As to Procedure In Court of Claims Is Deferred

The Section's fourth recommendation, as presented by Chairman Dienner, was as follows:

"RESOLVED, That the Association recommend to the Court of Claims that the court amend its rules:

"(1) To insure that testimony before the Commissioner be taken, as nearly as possible, as if on trial in a federal district court; to insure the plaintiff's testimony, defendant's testimony and plaintiff's rebuttal proceed, without extended adjournment, from day to day until completed.

"(2) To minimize delay in interlocutory matters.

"(3) To permit preliminary inspection by counsel for claimant of papers and information requested on a call under Section 164 of the Judicial Code (title 28 U. S. C. 272) and rules based thereon, with a view to eliminating, by such inspection when necessary, all irrelevant matter included within the scope of the original call."

Chairman Weston Vernon, Jr., of the Section of Taxation, suggested that action on the matter "be deferred until the Tax Section has had the opportunity to study the effect of the revised procedure on tax blanks in the Court of Claims."

"We welcome that," declared Chairman Dienner. The fourth recommendation was accordingly passed until the next meeting of the House. The Section's fifth recommendation was as follows:

"RESOLVED, That the American Bar Association recommend that whenever in a pending suit alleging patent infringement by the government, the head of a government department refuses or omits to furnish information or papers properly called for, or to answer interrogatories or to make other proper discovery under the rules necessary to prove such infringement and the extent thereof, the claimant shall, in lieu of dismissal of his claim, have at his election either of the following remedies:

"(1) A stay by the court of further action in the suit, together with a transfer of the same to an inactive calendar on which the case would remain, subject to being restored to the active calendar upon the request of either the claimant or the government if and when it appears that the data is no longer secret; or

"(2) A reference of the claim to the Court of Claims or some other tribunal, which shall be expressly authorized to serve as a Commission of Award to Inventors and to investigate in strict secrecy the merits of any such claim for infringement so referred to it and make a fair and impartial award thereon which shall be final and binding upon both the

claimant and the government."

As it was "intended to apply generally," Chairman Dienner moved that the fifth recommendation be likewise deferred. This was thereupon voted.

Recommendation No. 6 by the Patent Section encountered no objection from the Tax Section. "We would like to participate in the study," said Chairman Vernon. The motion was adopted as follows:

RESOLVED, That the American Bar Association appoint a special committee, including representatives from the Section of Patent, Trade-Mark and Copyright Law, to consider the desirability of a proposal that the Court of Claims be recast into a Trial Court and an Appellate Court and that the Federal Rules of Civil Procedure be made applicable to the Court of Claims in lieu of its present Rules to the extent that such is possible.

Current Patent Problems in Wartime Are Considered and Referred

The active controversy on current patent problems was brought before the House by Chairman Dienner, in moving the adoption of the Patent Section's seventh recommendation, as follows:

"RESOLVED, That the American Bar Association, after considering the report of its Special Committee on Current Patent Problems and the reply thereto by Assistant United States Attorney General Shea, adhere to the position heretofore taken in the following resolution adopted in 1942 by the Association by action of its Board of Governors:

" 'RESOLVED, That the American Bar Association disapprove of S. 2303, as unnecessary under the present state of the law relating to the rights of the government to secure the benefits of patented inventions during the war and in the interest of the war effort; and as not being limited, in its effect, to the emergency created by existing hostilities.' "

Mr. James R. Morford, of Delaware, made the point that S. 2303 had never been submitted to the House and that copies of it were not before the House. He thought the resolution should be referred to the Board of Governors; "otherwise I would like to speak against it," he said. Mr. Morford's motion to refer was adopted.

The same status existed as to the Section's eighth recommendation as to H. R. 675, as follows:

"RESOLVED, That the American Bar Association disapprove H. R. 675, giving the President power to issue licenses under any and all patents whenever an existing state of war involves the United States, inasmuch as the government possesses adequate power under existing laws."

Chairman Dienner moved that it be referred to the Board of Governor, which was voted.

Recommendations No. 9, 10, 11 and 12, from the Section, were respectively as follows:

IX—Science Mobilization Bills

"RESOLVED, That the American Bar Association disapprove the principle of S. 702, S. 607, H. R. 2100 and H. R. 2285 for reasons including the following:

"That the principle, if enacted into law,

"(1) would put the government in the business of owning and administering patents, which is not a proper governmental function;

"(2) would be unfair in that it proposes to override the conditions of all existing agreements and the provisions of all existing laws in its proposed acquisition of patents and patent rights;

"(3) would place in the hands of a single administrative officer the unwarranted and unprecedented power to grant or withhold licenses to individuals in accordance with his uncontrolled discretion;

"(4) would, by its contemplated acquisition of vast holdings of, or under, patents, vest the government with a technical monopoly operating in competition with private industry which, together with the government's unrestrained power of administration of its monopoly, would discourage private initiative in research and development."

X—Patent Interference Reform

"RESOLVED, That the American Bar Association approve in principle the following legislation providing for revision of the present practice of determining questions of priority of invention between rival inventors:

" 'Section 482 (35 U.S.C. sec. 7). The examiners-in-chief shall be persons of competent legal knowledge and scientific ability. The Commissioner of Patents, the first assistant commissioner, the assistant commissioners and the examiners-in-chief shall constitute a board of appeals, whose duty it shall be, on written petition of the appellant, to review and determine upon the validity of the adverse decisions of examiners upon applications for patents and for reissues of patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal being designated by the Commissioner. The Board of Appeals shall have sole power to grant rehearings.'

"[Note: The amendment consists in the omission of the words 'and in interference cases.']

" 'Section 4904 (a). Whenever an application is made for a patent which in the opinion of the Commissioner claims any subject-matter disclosed in any prior filed pending application or in any unexpired patent issued upon a prior filed application not more than one year before the filing of the later application, he shall reject the claim or claims which are readable upon such patent or on such prior filed unpatented application.

" '(b) Thereupon the applicant so rejected shall have access to the prior filed application and shall have the right, within a time to be fixed by the Commissioner, to ask a reconsideration of such rejection. If

such rejection is adhered to, the rejected applicant shall have the option of appealing from such rejection, or of asking an administrative award as herein provided.

"'(c) If the rejected applicant shall elect to appeal, he will thereafter be forever barred from asserting priority of invention over any senior application or patent upon which his claims have been rejected.

"'(d) If the rejected applicant shall, within a time to be specified by the Commissioner, ask for an administrative award of priority, then the Commissioner shall send a notice to all parties specifying the claims under rejection and stating that within a time specified, not less than twenty days thereafter any party may file in the Patent Office such proofs, not requiring testimony, as he may see fit, which tend to establish who is the prior inventor of the subject matter of the rejected claims, that within such specified time any interested party may copy any of the rejected claims and may call attention to any reference to the prior art which he may consider pertinent. At the same time, any party may file a written memorandum as to the pertinence of any proofs so filed and as to pertinence of any prior art so cited.

"'(e) Thereupon, without any hearing or oral argument, the Board of Appeals shall render its decision, first as to the patentability of any of the rejected claims which are questioned and, second, making an administrative award as to which party on the showing so made appears to have the better claim to priority of invention.

"'(f) From any holding of nonpatentability of any claim or claims, the usual ex parte appeals will lie.

"'(g) For the purpose of further proceedings hereunder the party in whose favor such administrative award shall be rendered shall be considered the senior party.

"'(h) Within three months from the rendering of any administrative award, any party who is held by such award not to be the senior inventor, may file a complaint under R.S. 4915 to have the question of priority adjudicated.

"'(i) In any such priority proceedings the administrative award shall only have the effect of determining which party or parties is entitled to file a complaint under R.S. 4915, but there shall be no presumption in favor of the correctness of the administrative award except that in the absence of any proceeding under R.S. 4915 or in the absence of proofs tending to support any complaint filed under section 4915, such administrative award shall authorize the grant of a patent to the party in whose favor it is rendered.

"'(j) In case of rejection of two or more applications upon the disclosure of the same prior filed application, and the filing of a complaint under R.S. 4915 as hereinabove authorized, the Commissioner shall notify all junior parties who then shall have the right to proceed under R.S. 4915, of the filing of said complaint, with adequate information identifying such suit. Thereupon any other junior party, who has not forfeited his right to proceed under R.S. 4915, may, upon motion and for cause shown and at the discretion of the court, intervene in said suit by filing its complaint therein as authorized by R.S. 4915.

"'(k) The grant of a patent to the applicant in whose favor such administrative award has been made shall not be withheld, suspended or delayed because of the pendency of any priority proceedings.

"'(l) If any deferment in any priority proceedings is or at any time prior to the termination of the priority proceedings becomes a patentee of the subject-matter in controversy and is adjudged to be in fact the prior inventor thereof, he may if he elects, by suitable supplemental proceedings, have adjudicated any question of infringement of his patent by any manufacture, use or sale of his patented invention by any junior party.

"'(m) The District Court of the United States for the district wherein the senior party is an inhabitant and the District Court of the United States for the District of Columbia shall have jurisdiction of suits under this statute. Provided that if it shall appear than an adverse party resides in a foreign country, or adverse parties reside in a plurality of districts not embraced within the same state, then the District Court of the United States for the District of Columbia shall have jurisdiction thereof and, unless the adverse party or parties voluntarily make appearance, writs shall be issued against all adverse parties with the force and effect and in the manner set forth in this section (28 U.S.C. sec. 113). Provided that writs issued against parties residing in foreign countries pursuant to this section be served by publication or otherwise as the court shall direct.

"'Provided further, that whenever priority is determined by the court pursuant hereto, such determination shall be conclusive for all purposes in the absence of additional evidence in any litigation involving any party who was not a party to the proceeding under R.S. 4915 hereunder which the court shall find conclusive to the contrary.

"'Section 4911 (35 U.S.C. sec. 59a): If any applicant is dissatisfied with the decision of the Board of Appeals, he may appeal to the United States Court of Customs and Patent Appeals.'

"[Note: This omits all reference to interference proceedings which are now found in section 4911 and also to the applicant's waiver of right to proceed under R.S. 4915 because in the previous amendment an appeal from the primary examiner to the Board of Appeals waives all right to thereafter raise any question as to priority.]

"'Section 4915 (35 U.S.C. sec. 63.) Whenever a patent on application is refused by the Commissioner of Patents or wherever an administrative award is rendered adverse to an applicant, such applicant, unless an appeal has been taken to the Board of Appeals from a rejection as provided in section 4904 hereof in which case no action may be

brought under this section, may have remedy by a complaint, if filed within three months, after such refusal; and the court having cognizance thereof, on notice to adverse parties and other due proceedings had, may adjudge that such applicant is entitled according to law to receive a patent for his invention as specified in his claim or for any part thereof as the facts in the case may appear, and such adjudication, if it be in favor of the right of applicant, shall authorize the Commissioner to issue such patent on the applicant's filing in the Patent Office a copy of the adjudication and otherwise complying with the requirements of law. In all cases a copy of the bill shall be served on the Commissioner within ten days of the filing of the complaint and where there is no opposing party all the expenses of the proceedings shall be paid by the applicant whether the final decision is in his favor or not. In all suits brought hereunder where an administrative award has been entered by the Board of Appeals, such administrative award shall be controlling on the court in the absence of proofs in support of the complaint.

" 'And upon the filing of a complaint in the District Court of the United States for the District of Columbia where remedy is sought under section 4915 or section 4918 of the Revised Statutes (U.S.C. sec. 63 or 66), without seeking other remedy, if it shall appear that there is an adverse party residing in a foreign country, or adverse parties residing in a plurality of districts not embraced within the same state, the court shall have jurisdiction thereof and writs shall, unless the adverse party or parties voluntarily make appearance, be issued against all of the adverse parties with the force and effect and in the manner set forth in this section (28 U.S.C. sec. 113); provided that writs issued against parties residing in foreign countries pursuant to this section may be served by publication or otherwise as the court shall direct.

" 'Whenever one or more applicants for patents who are not parties to any original proceeding hereunder shall file complaints herein asking that they may be made parties to such proceeding the court shall have jurisdiction upon good cause shown and at the court's discretion to permit such parties to intervene in such litigation.

" 'From and after the passage and approval of this act no interference shall be declared by the Commissioner of Patents, and neither the Patent Office nor any court on appeal from the Patent Office shall have jurisdiction to hear or determine any interference or priority proceeding except where an interference has been declared prior to the passage and approval of this Act. As to all such cases where an interference has been declared, the Patent Office and the courts on appeal from the Patent Office or in any proceeding thereunder, shall, only as to interference proceedings then pending, have and exercise the same jurisdiction and powers which they respectively had prior to the passage and approval hereof.' "

XI—Federal Administrative Procedure

"RESOLVED, That such portions of S. 323 and H. R. 2323 as vary the existing rules for admission to practice before the Patent Office be disapproved, without thereby approving the existing rules for admission."

XII—Trade-Marks

"RESOLVED, That H.R. 82 Union Calendar No. 221, be amended in the following particulars:

So that Section 44 (c) will read as follows:

" '(c) No registration of a mark in the United States by a person described in paragraph (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

" 'For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment, the country in which he is domiciled, or if he has not a domicile in any of the countries described in paragraph (b) of this section, the country of which he is a national.'

So that Section 44 (d) (4), as amended, will read as follows:

" '(4) nothing in this subsection (d) shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.'

So that Section 44 (h) will read as follows:

" '(h) Any person designated in paragraph (b) of this section as entitled to the benefits and subject to the provisions of this Act shall be entitled to effective protection against unfair competition, and the remedies provided herein for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.'

"4. Section 29, Page 25, Line 6, strike the colon and insert a period and cancel the following proviso clause appearing thereafter:

" 'Provided, however, That the foregoing requirement as to notice shall be deemed fulfilled in respect to a registered mark used in connection with goods or services of foreign origin if the mark as used is accompanied by the notice of registration used in the country of origin of the goods or services to denote registration there.'

So that Section 29 will read as follows:

" 'Sec. 29. Notwithstanding the provisions of Section 22 hereof, a registrant of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this Act, shall give notice that his mark is registered by displaying with the mark as used the words "Registered in U. S. Patent Office" or "Reg. U. S. Pat. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this Act by such a registrant failing so to mark goods bearing the registered

mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this Act no profits and no damages shall be recovered under the provisions of this Act unless the defendant had actual notice of the registration.'"

In the absence of the definitive bills, Mr. Morford moved that the resolutions be each referred to the Board of Governors. Judge Robert McC. Marsh, of New York, wanted it made clear that, in view of the actions heretofore taken on the same subjects, the Board of Governors had the power to express the views of the Association. Chairman Crump confirmed the *interim* powers of the Board of Governors as the agency of the House between meetings. The motion to refer was adopted.

For the Section, Chairman Dienner offered the following:

"RESOLVED, That it is the sentiment of the House that all matters relating particularly to the law of patents, trade-marks or copyrights and to criticisms and suggestions for revision thereof and consideration of problems arising under such laws, should be initially referred to and reported upon by the Section of Patent, Trade-Mark and Copyright Law, and further, that a copy of this resolution be transmitted to the President and Board of Governors and Chairman of the House of Delegates of this Association."

This resolution was seconded, but in the pressure of working against time, it was not put to a vote of the House, and therefore stands only as an expression by the Patent Law Section. Chairman Vernon of the Section of Taxation arose to explain that he had found that Recommendation No. 5, above quoted, did not cover procedure in the Court of Claims in tax cases. Mr. Dienner accordingly moved the approval of Recommendation No. 5, which was voted.

Report Is Made by the Section of International Law

After the numerous remaining reports which contained no recommendations and required no action by the House had been received and filed, Mr. Edward W. Allen, of the State of Washington, gave the report of the Section of International and Comparative Law. He was agreeable to the deferring of action on its *interim* resolution for an international judicial system. He referred to the Section's "extremely well-written and interesting report on the trial and punishment of war criminals, which had been placed before the House."

The Section had prepared a recommendation regarding the law of aviation and freedom of the air. At the suggestion of Chairman Lyman of the Committee on Draft, the resolution was referred, on Mr. Allen's motion, to the Committee on Draft, for study and report.

Chairman Allen offered anew a resolution on the subject of fisheries, which he said had been acted on by this House several times. Mr. Lyman reported that the Committee on Draft doubted the need for readopting the resolution. Chairman Allen accepted as "satisfactory" Chairman Crump's statement that, in the absence of objection, "it will be understood that the House adheres to its previous action, without a formal motion to that effect."

Recommendations of the Section of Taxation Are Adopted

The last report of a Section or committee to require extended action by the House at this meeting was that of the Section of Taxation. Concerning its first recommendation, Chairman Weston Vernon, Jr., said:

"This relates to net operating loss and unused excess profits tax credits. Under the present tax law, net operating losses may be carried forward for two successive years and may also be carried back to prior years. There is some question as to whether or not the benefits of those Sections may be obtained where a corporation goes through a non-taxable reorganization. Resolution No. 1 as proposed by the Section would correct that and permit the transferees in non-taxable reorganizations to get the benefit of the operating loss, carryback and carryforward, as well as certain excess profits tax credits which carry over."

On Chairman Vernon's motion, Recommendation No. 1 was adopted, after Mr. Hall of Louisiana had reported that it was in proper form for action, as follows:

RESOLVED, That the American Bar Association recommend to the Congress that the Internal Revenue Code provisions be amended so as to extend to transferors and transferees in non-taxable reorganizations the full benefit of the net operating loss and unused excess profits credit carryovers;

BE IT FURTHER RESOLVED, That the Association propose that this result be achieved by amending Sections 122 and 710 of the Internal Revenue Code to permit the carryover and carryback to transferors and transferees in non-taxable reorganizations; and

BE IT FURTHER RESOLVED, That the Section of Taxation be directed to urge the following proposed amendments, or their equivalent in purpose and effect, upon the proper committees of the Congress:

That Section 122 (b) be amended by adding thereto at the end thereof a new subparagraph as follows:

"(3) In the case of a reorganization of a corporation as defined in Section 112 (g) (1) the net operating loss of the transferor prior to the reorganization shall be allowed to and divided between the transferor and the transferees in the proportion of their respective taxable net incomes in the first year after such reorganization and any unused portions of such net losses shall be treated as net losses of such tranferee corporations; the net operating losses sustained by such transferees shall be carried back to their transferors and any unused balance carried forward to the transferees in succeeding years as if the reorganized companies and their transferors were the same taxpayer."

That Section 710 (c) (3) be amended by adding thereto a new subparagraph as follows:

"(c) In the case of a reorganization as defined in Section 112 (g) (1) the unused excess profits credit carryover of the transferor prior to the reorganization shall be allowed to and divided between the transferor and transferee in the proportion to their representative taxable incomes in the first year after such reorganization and any balance of such unused excess profits credit shall become the credit of such transferee corporations in any succeeding year subject to the limitations of this Section; any unused excess profits

credit of a transferee for any period subsequent to the reorganization shall be carried back to the transferor as if the reorganization had not occurred and any unused balance thereafter remaining to the transferor shall be carried forward as herein provided."

Action Is Voted as to Taxation of Personal Holding Companies

For the Section of Taxation, Chairman Vernon reported that "Recommendation No. 2 relates to personal holding companies and the exemption from the personal holding company classification where they become subject to the excess profits tax. It clears up an ambiguity in the statute and would exempt from the personal holding company surtax, personal holding companies which file consolidated returns and become subject to the excess profits tax. Currently it was the intention of Congress to accomplish that in the 1942 Act, but there is some question as to whether it was accomplished."

His motion for the approval of Recommendation No. 2 was adopted by the House, as follows:

RESOLVED, That the American Bar Association recommend to the Congress that the provisions of the Internal Revenue Code be amended so as to exempt from personal holding company classification corporations filing consolidated returns;

BE IT FURTHER RESOLVED, That the Association propose that this result be achieved by amending Section 501 (b) of the Internal Revenue Code; and

BE IT FURTHER RESOLVED, That the Section of Taxation be directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the proper committees of the Congress:

That Section 501 (b) of the Internal Revenue Code be amended by adding thereto a new subparagraph (8) as follows:

"(8) (a) A corporation, a member of an affiliated group of corporations, filing consolidated returns under Section 141.

"(b) The amendment made by this subparagraph shall be applicable to taxable years beginning after December 31, 1941."

Recommendation as to Transferability of Post-War Refund Bonds Is Approved

Concerning the Section's third recommendation, Chairman Vernon said: "This relates to the transferability of post-war refund bonds. Under the Excess Profits Tax Law, corporations are issued post-war refund bonds for approximately ten per cent of the amount of excess profits tax paid. There is some question as to whether those bonds are transferable to successor corporations, and Resolution No. 3 provides for such transferability."

His motion to adopt Recommendation No. 3 was carried by the House, as follows:

RESOLVED, That the American Bar Association recommend to the Congress that the provisions of the Internal Revenue Code be amended to permit transfers of Post-War Refund Bonds to the legal owners thereof following corporate reorganizations, mergers, consolidations, liquidations, etc.;

BE IT FURTHER RESOLVED, That the Association propose that this result be achieved by amending Section 780 (c) of the Internal Revenue Code; and

BE IT FURTHER RESOLVED, That the Section of Taxation be directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the proper committees of the Congress:

That Section 780 (c) of the Internal Revenue Code be amended by striking the period at the end of the second complete sentence therein and substituting therefor the following (new matter in italics):

"Such bonds shall bear no interest, shall be non-negotiable, and shall not be transferable by sale, exchange, assignment, pledge, hypothecation, or otherwise, on or before the date of cessation of hostilities in the present war, but after said date, such bonds shall be negotiable, and may be sold, exchanged, pledged, assigned, hypothecated, or otherwise transferred, without restriction, and shall be redeemable (at the option of the United States) in whole or in part upon three months' notice, *provided however that such bonds may at any time be transferred in accordance with regulations prescribed by the Secretary of the Treasury to the legal owners of the corporate property following a liquidation, dissolution, merger, consolidation, or similar corporate reorganization.* Such bonds . . ."

Recommendation Is Approved for Extending Time to File Claims

Chairman Vernon explained that Recommendation No. 4 favors an extension of "the period for filing claims for relief from discriminatory and excessive profits taxes. Section 722 of the law permits claims for relief to be filed but provides that they should be filed within six months after the time of filing a return. The Section of Taxation believes that the regular period for filing claims for refunds should govern in the case of claims for relief under Section 722, and Resolution 4 would accomplish that purpose."

His motion to adopt Recommendation No. 4 was carried by the House, as follows:

RESOLVED, That the American Bar Association recommend to the Congress that the Internal Revenue Code be amended so as to provide that application for the benefits of Section 722 may be made within the period prescribed for the filing of claims for refund of excess profits taxes.

BE IT FUTHER RESOLVED, That the Association propose that this result be achieved by amending Section 722 (d) of the Internal Revenue Code, and

BE IT FURTHER RESOLVED, That the Section of Taxation be directed to urge the following proposed amendments, or their equivalent in purpose and effect upon the proper committees of the Congress:

That Section 722 (d) be amended by striking all thereof after the first sentence thereof, and by adding thereto a new sentence as follows:

"The benefits of this Section shall not be allowed unless the taxpayer within the time prescribed in Section 322 shall file application therefor in accordance with regulations to be prescribed by its Commissioner with the approval of the Secretary."

The House Favors Correction of the Decision in the Stewart Case

For the Section, Chairman Vernon next explained that its Recommendation No. 5 favors a correction of "the decision of the Supreme Court in the *Stewart* case, in which it was held that where a donor had created an irrevocable trust to accumulate the income for the benefit of minors but containing a provision that the income might be used in the discretion of the trustee for the support of minors, the income was nevertheless taxable to the donor. The Section of Taxation recommends that the donor be taxable only on the

amount of income which is actually used for the support of the minor, and thus relieve the donor of his obligation to support the child."

His motion to approve Recommendation No. 5 was adopted by the House, as follows:

RESOLVED, That the American Bar Association recommend to the Congress that Section 167 of the Internal Revenue Code be amended by adding a new subsection (b), to the end that as a result of said amendments, except to the extent that income of a trust is actually distributed for the support and maintenance of minor children or other beneficiaries of a trust whom the grantor is legally obligated to support, no part of the income of the trust shall be considered income to the grantor merely because such income may be used for the support and maintenance of such beneficiary or merely because the corpus of the trust, or some part thereof, may be so distributed; and to the further end that the purpose of said amendments be applied retroactively; and that the Officers and Council of the Section of Taxation be directed to urge the following proposed amendments, or their equivalent in purpose and effect, upon the proper committees of the Congress:

Section 167. Income for Benefit of Grantor

". . .

(c)

(1) Except to the extent that income of a trust is actually distributed for the support and maintenance of minor children or of other beneficiaries of a trust whom the grantor is legally obligated to support, no part of the income of a trust shall be considered income which is or may be 'distributed to the grantor' or 'held or accumulated for future distribution to the grantor' within the meaning of this Section, nor income of the grantor under Section 22 (a) of the Internal Revenue Code, merely because such income, or a part thereof, may be used for the support and maintenance of such minor children of the grantor, or of such other beneficiaries.

(2) The amendment made by this Section shall be applicable to taxable years beginning after December 31, 1938.

(3) For the purposes of the Revenue Act of 1936, or any prior revenue act, the amendment made to the Internal Revenue Code by this Section shall be effective as if it were a part of such revenue act on the date of its enactment."

Section 166. Revocable Trusts. (Insert "(a)" at the beginning of the present provisions of the Section and add after the present provisions of the Section the following new subsection):

". . .

(b) There shall not be included in computing the net income of the grantor any part of the net income of the trust merely because the corpus of the trust, or some part thereof, may be distributed to or applied for the use or benefit of a minor child or other person whom the grantor is legally obligated to support.

(c) The amendment made by this Section shall be applicable to taxable years beginning after December 31, 1938.

(d) For the purposes of the Revenue Act of 1936, or any prior revenue act, the amendment made to the Internal Revenue Code by this Section shall be effective as if it were a part of such revenue act on the date of its enactment."

Correction of the Decision in the Virginian Hotel Case Is Favored

Chairman Vernon explained that the Section's "Recommendation No. 6 likewise would correct a decision of the Supreme Court in the *Virginian Hotel* case. Apparently the Supreme Court took the position that under the present law relating to depreciation, it is impossible for a taxpayer in a subsequent year, having claimed a higher rate of depreciation in a prior year, to correct the mistake so far as it relates to the reduction in basis, even though the taxpayer has obtained no benefit from the excess depreciation and the government has suffered no detriment from it. Resolution No. 6 would correct that situation and prevent the perpetuation of error."

Recommendation No. 6 was thereupon adopted by the House, as follows:

RESOLVED, That the American Bar Association recommend to Congress the amendment of Section 113 (b) (1) of the Internal Revenue Code to permit correction of erroneous deductions of excessive depreciation where the Treasury has not been penalized by such erroneous deductions.

BE IT FURTHER RESOLVED, That the Section of Taxation be directed to urge the following proposed amendment, or its equivalent in purpose and effect, upon the proper committees of Congress:

(a) The portion of subparagraph (B) of Section 113 (b) (1) preceding the first period shall be amended to read as follows:

"(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization and depletion to the extent of so much of the deduction as has served to reduce the taxes which, in the absence of such deduction, would have been payable, but not less than the amount allowable, under this chapter or under prior Income Tax Laws."

(b) "The amendments made by this act shall be applicable with respect to taxable years beginning after December 31, 1938."

(c) "For the purposes of the Revenue Acts of 1932 and all subsequent revenue acts, the amendments made to the Internal Revenue Code by Section (a) of this act shall be effective as if they were a part of each such revenue act on the date of its enactment."

Postponement of International Revenue Administrative Code Is Favored by the House

As to the Section's concluding recommendation, Chairman Vernon said that its Resolution No. 7 proposes that "the study of an International Revenue Administrative Code be postponed until the present emergency is over. A few years ago, the Treasury put forth, for study by the Bar, a complete recodification of the administrative provisions of the Internal Revenue Code. It was advertised as only a recodification, but on examination it was discovered that it contained many provisions which changed the existing law. They are too complicated and too numerous to permit of study at this time, and it is the recommendation of the Section that consideration of

the proposed Code be deferred for the present emergency."

His motion to adopt Recommendation No. 7 was carried by the House, as follows:

> RESOLVED, That the American Bar Association recommend to the Congress that further consideration of the proposed Internal Revenue Administrative Code be deferred until after the end of the present emergency, because it is not feasible during such an emergency to devote to the study of a general revision of the administrative portions of the internal revenue laws the time and attention which such a study would require.

The Chairman of the House announced that the Section of Real Property, Probate and Trust Law had a resolution which it would like to offer at this time. Chairman Crump stated that the resolution had not been considered by the Board of Governors or by any committee appointed for the purpose, and there is no time for any committee to be appointed to consider it. Under the circumstances, he ruled that such a resolution could not be offered, so late in the meeting. There was no appeal.

Report to the House as to Resolutions Adopted by the Assembly

The next order of business was the interesting item of President Morris' report of the action of the Assembly upon resolutions offered by members from the floor, reported on by the Resolutions Committee, and adopted by the Assembly at its "open forum" session.

Resolution No. 1 dealt with international affairs and directed the Section of International and Comparative Law to make a study of the matters set forth in the resolution, of which the text appears in the report of the proceedings of the Assembly.

President Morris moved that the House also adopt the resolution. This was put to a vote and carried.

Resolution as to the Outlawing of Strikes in War Industries Is Ruled Out of Order

President Morris next reported the resolution, introduced by Mr. Louis S. Cohane, of Michigan, in favor of the outlawing of strikes in war industries. He said that the Resolutions Committee had recommended against its adoption, but the Assembly had adopted it, by a close vote, after debate. The text of the resolution appears in the Assembly proceedings.

"As the agent of the Assembly," President Morris moved that the House also adopt the resolution. Mr. Floyd E. Thompson, of Illinois, made the point of order that "It is not within the province of the American Bar Association to act on any such matter." Chairman Crump sustained the point of order. This ruling was contrasted with the action of the House, at its 1941 and 1942 meetings, in adopting recommendations for the prevention of strikes in war industries (A.B.A.J. April 1942 issue, p. 293, Oct. 1942 issue, p. 663.)

Under the extreme pressure of time, no appeal from the decision of the Chairman of the House was taken. President Morris made a directly opposite ruling a few minutes later in the Assembly. The House did not suggest resort to the referendum provisions of Article IV, Section 2, of the Association's Constitution.

President Morris reported that Resolution No. 4 had been offered by Mr. Joseph C. Thomson, of New York. The Resolutions Committee reported, and the Assembly adopted, a substitute resolution, as follows:

> RESOLVED, That it is the sense of this meeting that membership in the American Bar Association is not dependent upon race, creed or color.

"As the agent of the Assembly," President Morris moved the adoption of that resolution also by the House. The motion was seconded, was put to a vote, and was carried.

Other Resolutions from the Assembly's "Open Forum" Are Adopted by the House

President Morris stated that Resolution No. 5, offered by Mr. William Roy Vallance, of the District of Columbia, was amended and then adopted by the Assembly, in the following form:

> RESOLVED, That the American Bar Association expresses to the Brazilian Bar Association its appreciation for the many courtesies extended to its delegates to the Second Conference of the Inter-American Bar Association held in Rio de Janeiro, August 7 to 12, 1943, on the one hundredth anniversary of the founding of the Brazilian Bar Association, and congratulates the Brazilian Bar Association on the success of the conference.

"As the agent of the Assembly," President Morris moved the adoption of that resolution. The motion was seconded, was put to a vote, and was carried by the House.

Resolution No. 7, by Mr. Murray Seasongood, of Ohio, was recommended by the Resolutions Committee for adoption by the Assembly, in the following form:

> RESOLVED, That it is the sense of the American Bar Association that general immunity of the government from the payment of costs works injustice and that, except in strictly criminal prosecutions, costs should be allowed as of course, including costs against the United States, its officers and agencies, to the prevailing party, unless the court, for good cause shown, otherwise directs.
>
> RESOLVED FURTHER, That this Association sponsor legislation and changes in the Federal Rules to effectuate the purposes of this resolution.

The Assembly's "open forum" having adopted the resolution, President Morris, "as the agent of the Assembly" moved the adoption of that resolution by the House also. The motion was seconded, was put to a vote, and was carried.

President Morris stated that Resolution No. 8, by the Resolutions Committee, revamping a resolution of Mr. Will Shafroth, of the District of Columbia, which asked that an article written by the Honorable Hatton W. Sumners and published in the current *Readers' Digest*, be republished in the AMERICAN BAR ASSOCIATION JOURNAL, was to the effect that the resolution be referred to the editors of the AMERICAN BAR ASSOCIATION JOURNAL. The House concurred in the action of the Assembly in adopting the resolution in that form.

Concluding Debate Ensues as to Group Medical Service under Federal Auspices

President Morris reported that a resolution introduced in the Assembly by Mr. Loyd Wright, of California, was in criticism of and opposition to S. 1161, which would establish under the direction of the Surgeon General of the United States, a system of group medical service. The Resolutions Committee recommended that this resolution be referred to the Board of Governors for consideration and such action as the Board sees fit to take. The Assembly amended the resolution to include reference also to the House of Delegates. Mr. Wright's original resolution read:

> RESOLVED, That the American Bar Association is opposed to Senate Bill 1161 and the obvious effort therein contained to establish federal control of the medical profession and the regimentation of doctors and hospitals.

President Morris said that "an inference which might be drawn from the action of the Assembly is that the House or the Board of Governors create a committee to inquire into the matter and report to the House. As the agent of the Assembly," he moved the adoption of the resolution for reference, as amended by the Assembly, and suggested "that the House be open for a resolution directing appointment of a committee for study."

Mr. Wright Attacks the Wagner-Murray Bill (S. 1161)

Mr. Avery, of Massachusetts, made a point of order against the resolution of the Assembly. Mr. Wright said, as to its pertinency to Association purposes:

"This bill was presented by Senator Robert F. Wagner of New York and Senator James Murray of Montana. It makes provision for free general medical, special medical, laboratory and hospitalization benefits for more than 110,000,000 people of the United States. It proposes placing in the hands of one man, the Surgeon General of the Public Health Service, the power and authority (1) to hire doctors and establish rates of pay, possibly for all doctors; (2) to establish fee schedules for services; (3) to establish qualification for specialists; (4) to determine the number of individuals for whom any physician may provide service; (5) to determine arbitrarily what hospitals or clinics may provide service for patients.

"The bill provides that every employer shall pay a tax, on wages paid to individuals up to $3000 per year, of six per cent. The employee pays a similar tax. The self-employed individual shall pay a tax on the market value of his services up to $3000 per year. The federal, state and municipal employee shall pay a tax of three and one-half per cent.

"The bill provides that the Surgeon General shall select specialists and shall decide what the specialists shall be paid. The Surgeon General may prescribe the maximum number of individuals for whom any physician can provide service. The Surgeon General may distribute the available patients among the available doctors on a pro rata basis.

"Gentlemen, if that is something that the American lawyer is not concerned with, then I don't know why we have an Association. We have heard much from our President and from the leaders of the Bar throughout the United States, that the legal profession should accept the responsibility of furnishing leadership. Every time a matter comes up before this House or before the American Bar that some people don't want or that they think is controversial, the old question is dragged out that it is not within the narrow confines of the administration of justice!"

Point of Order Is Not Sustained and Assembly Action Is Adopted, with a Condemnation of Federal Control

Mr. Avery renewed his point of order. On inquiry from the Chairman of the House, Chairman Barkdull of the Rules Committee expressed the opinion that the subject-matter was within the province of the Association. Chairman Crump "vicariously" so ruled, and adhered to that ruling against a further point of order make by Mr. Floyd E. Thompson, of Illinois.

The motion of the Resolutions Committee, as amended by the Assembly, was finally adopted by the House. Mr. Wright thereupon moved the following further resolution, which was adopted by the House:

> RESOLVED, That the Board of Governors be requested to appoint immediately a special committee to study, analyze and investigate Senate Bill 1161, and that the Board of Governors give publicity to the recommendations and findings of such special committee and the action of the Board of Governors thereon; be it further
>
> RESOLVED, That the House of Delegates is opposed to any legislation, decree, or mandate that subjects the practice of medicine to federal control and regulation beyond that presently imposed under the American system of free enterprise.

Concluding Resolution Expresses Thanks to Hosts

President Morris then moved the adoption of the concluding resolution of the Assembly:

"Your Committee feels that its report would not be complete without an expression of gratitude to our host associations and therefore recommends the adoption of the following resolution:

> RESOLVED, That the American Bar Association hereby expresses its heartfelt gratitude to the Chicago Bar Association and the Illinois State Bar Association for their helpful cooperation and the many courtesies extended during the past week—all of which were so freely tendered in spite of the chaotic conditions prevailing at this time.

This resolution was adopted amid appreciative applause.

In the hurry against time, the remaining formalities as to reports were rushed through. The report of the Board of Elections, by Mr. William P. MacCracken, Jr., was received and filed.

Chairman Crump then returned the gavel to President Morris, who resumed the Chair. The Secretary reported the nominations made at the March meeting of the House of Delegates: For President, Joseph W. Henderson, Pennsylvania; for Chair-

man of the House of Delegates, Guy Richards Crump, California; for Secretary, Harry S. Knight, Pennsylvania; for Treasurer, John H. Voorhees, South Dakota. The members of the Board of Governors had already been certified and elected.

No other nominations having been made for these offices, by members of the Association, through the petition method, the Secretary was, upon motion regularly made and seconded, instructed to cast the unanimous ballot of the House for the above-stated nominees. This having been done, they were declared elected.

At five o'clock, the concluding session of the House was adjourned, as a part of this Annual Meeting.

Board of Governors' Meetings

(Continued from page 553)

The first subject presented to the new Board, consisting of the newly-elected members and officers, with President Joseph W. Henderson in the chair, was the approval of a budget for the current year. In presenting its report, the Budget Committee directed attention to the substantial savings effected during the year just passed through economies practiced in all phases of Association activity, and expressed the hope that expenditures during the current year would not exceed current income plus the savings effected in 1942-1943. The budget, as adopted, again calls for the adequate financing of the Association's war work activities.

In connection with the discussion of the budget, extended consideration was given to the problem involved in printing and printing costs. It was decided that in the printing of the 1943 Annual Report of the Association, the usual geographical list of members will be omitted and in lieu thereof there will be listed only those who have become members of the Association since the publication of the 1942 Report. With further reference to the subject of printing, the Board authorized the President to appoint an Emergency Committee on Printing and Printing Costs, consisting of three members, to replace the present Emergency Committee on Printing Costs and Publications.

Judge Edward T. Fairchild, of the Supreme Court of Wisconsin, William P. MacCracken, Jr., Washington, D. C., and Laurent K. Varnum, Grand Rapids, Michigan, were reappointed as members of the Board of Elections, Judge Fairchild being renamed as chairman.

Action was deferred on the fixing of the time and place of the next annual meeting. Likewise deferred were the fixing of the time and place of the meeting of the State Delegates and a decision as to whether a mid-year meeting of the House of Delegates is to be held. These matters were committed to the Board for decision by a resolution adopted by the House at its closing session.

President Henderson announced that the annual conference of section chairmen of the Association will be held at the Drake Hotel in Chicago on Saturday, October 23.

Olive G. Ricker was reelected Executive Secretary of the Association and Joseph D. Stecher, of the Toledo, Ohio, bar, was reelected Assistant Secretary.

INSTITUTE ON FEDERAL CRIMINAL RULES

By ALEXANDER HOLTZOFF

Secretary, Advisory Committee on Federal Rules of Criminal Procedure

AN Institute to consider the preliminary draft of the Federal Rules of Criminal Procedure was held in connection with the Annual Meeting of the Association. It consumed an entire day and was well attended. It was opened by an address by Honorable Homer Cummings, former Attorney General of the United States, who urged the adoption of the draft as a whole but advocated the deletion of Rule 5 (b).

General Cummings expressed approval of the rule eliminating pleas in abatement, demurrers, motions to quash and special pleas in bar and substituting a general motion therefor; the rule permitting waiver of indictment; the rule simplifying removal proceedings; and the rule simplifying appellate procedure, as well as a number of other rules. He also commended the simplicity of the proposed forms.

The individual rules were then discussed by five panels. The chairman of Panel I, which dealt with preliminary proceedings, was Circuit Judge Harvey M. Johnsen of the Eighth Circuit, the other members being S. B. Campbell of Virginia, United States Attorney Neil Andrews of Atlanta, and Judge F. M. Richman of the Supreme Court of Indiana. They approved the rules generally, suggesting some minor amendments. Judge Johnsen, however, criticized Rule 5 (b) referred to above, relating to confessions. In a discussion from the floor, Judge Harold M. Stephens of the United States Court of Appeals for the District of Columbia vigorously opposed this rule. A letter from Honorable J. Edgar Hoover, Director of the Federal Bureau of Investigation, was then read stating

that Rule 5 (b) "would handicap law enforcement, would be contrary to public interest, and would serve only the criminal whose advantages seem to be paramount to the public welfare in the suggested procedural requirement." His letter was supplemented by a detailed memorandum summarizing situations that had occurred in actual cases. Judge John J. Parker, Senior Circuit Judge for the Fourth Circuit, moved that it was the concensus of opinion of those present that Rule 5 (b) should be stricken from the draft. After a viva voce vote, Judge Johnsen announced that the motion had been adopted by a substantial, heavy majority.

Panel II directed its attention to the rules dealing with grand jury proceedings. Judge Orie L. Phillips, Senior Circuit Judge for the Tenth Circuit was chairman. While approving the rules generally, he objected to the provision permitting a challenge of grand jurors, stating that this practice is now unknown. He also opposed the idea that bias may be a ground for disqualification of a grand juror. District Judge William F. Smith of New Jersey, commended the rule permitting waiver of indictment. He suggested that an express provision should be inserted for motions for bills of particulars, with a limitation on the time within which such motions might be made. He was followed by Alexander M. Campbell, United States Attorney of Fort Wayne, Indiana, who approved Rule 9, relating to joinder of offenses and defendants, but adhered to the opposition previously expressed to Rule 5 (b). Other provisions were discussed by James R. Morford, of Wilmington, Delaware, and Marks Alexander, Assistant United States Attorney of Springfield, Illinois. R. F. Maguire of Portland, Oregon, recommended the use of a smaller grand jury than that proposed by the rules and now employed. He also intimated that the provision for a waiver of indictment may be unconstitutional. In reply Judge Phillips convincingly maintained that a defendant may validly waive this constitutional safeguard. Judge Smith took the floor again and suggested that the maximum term of a grand jury should not be as long as eighteen months, as proposed in the Rule.

The afternoon session was opened by an address by Wendell Berge, Assistant Attorney General. The draft as a whole received his approbation, with the exception of Rule 5 (b). He also suggested that Rule 19 relating to discovery should be limited, so as to exclude statements of witnesses, investigative reports, office memoranda and grand jury minutes.

To Panel III were assigned the rules bearing on proceedings between indictment and trial. District Judge Walter C. Lindley, of the Eastern District of Illinois, commended Rule 13, which substitutes a simple motion for pleas in abatement, demurrers, motions to quash, and special pleas in bar. While also approving the other rules in this group, he objected, on the ground that it was unnecessarily burdensome, to the requirement that at arraignment the indictment should be read unless the defendant consents that the substance of the charge be stated instead. He was followed by Joseph T. Votava, United States Attorney of Omaha, who suggested that the plea of *nolle contendere* should not be accepted except with the consent of the government. The next speaker was Honorable R. G. Simmons of the Supreme Court of Nebraska, who objected to the pre-trial and alibi rules as advantageous to guilty defendants. Ray M. Foreman, United States Attorney for the Eastern District of Illinois, replied, pointing out the merits of pre-trial procedure.

Panel IV was headed by District Judge Merrill E. Otis of the Western District of Missouri, who praised the draft in glowing terms and urged its adoption. He suggested, however, a number of amendments, among them the insertion of a provision as to the method of exercising challenges of jurors. He also objected to the rules which would permit a defendant to consent to a jury of less than twelve or to a verdict by a vote less than unanimous. Floyd Thompson, President of the Chicago Bar Association, approved the draft as a whole, except that, as had been the case with a number of previous speakers, he objected to Rule 5 (b). J. Albert Woll, United States Attorney of Chicago, discussed the rules relating to verdicts. Frank Hartgraves of Texas commented on the Rule relating to criminal contempt. Judge Otis then took the floor again and suggested that Rule 40 (c) (2) providing for change of venue be limited by restricting such change only to some other point within the district in which the prosecution originated.

Panel V, which directed its attention to the rules affecting proceedings after trial, was headed by Circuit Judge Herbert F. Goodrich of the Third Circuit. The other members were Howard L. Doyle, United States Attorney of Springfield, Illinois; Edward M. Curran, United States Attorney for the District of Columbia; Laurance M. Hyde of the Supreme Court of Missouri, and William S. Stewart of the Chicago bar. Mr. Curran approved Rule 31 relating to motions for a new trial. Judge Hyde suggested a simplification of the notice of appeal and the elimination of the requirement that it be served on the respondent. There was a discussion from the floor of the Rule eliminating the printing of the record on appeal and providing that instead counsel should print as appendices to their briefs those portions of the record which they wished the court to read.

Judge Rossman of Portland, Oregon, chairman of Section on Judicial Administration, presided at the morning session and Professor J. J. Robinson, chairman of the Section of Criminal Law, who is also Reporter of the Advisory Committee, at the afternoon session. A number of members of the Advisory Committee attended as observers, among them Arthur T. Vanderbilt, chairman; Alexander Holtzoff, secretary; Murray Seasongood, Lester B. Orfield, George H. Dession and Herbert Wechsler.

JOSEPH B. KERSHAW

Man of the Law and Soldier of the South

By GEORGE R. FARNUM

of Boston

Former Assistant Attorney General of the United States

THE Postmaster of Camden sat by the open fire and, as he watched the dying embers, let his thoughts drift back over the long past. His allotted hours in the dispensation of time were drawing to a close. He had run a good race, reached the goal, and now his pace was what Justice Holmes described years afterwards as "the canter that brings you to a standstill." There were only memories now to cheer and satisfy—the memories of a life filled with intense activity and high drama.

He had been born in 1822 into one of the representative families of South Carolina. His grandfather, Joseph Kershaw, after whom he was named, was a stout hearted and resourceful Yorkshire man who had settled in the middle of the eighteenth century at Camden. There he made a fortune—which was quickly lost when he cast his lot with the patriots in the Revolution. He had suffered capture and endured deportation to a British dependency in the bargain.

Of his father, John Kershaw, who died when he was seven, he retained but a vague recollection. His memory, however, had been cherished in the family and honored in the community, and he had at various times served as mayor, county judge, member of the legislature and Congressman. His mother was a DuBose of Huguenot extraction, whose father, Captain Isaac, had fought valiantly in the Revolution and had established himself at Camden shortly thereafter.

As he reviewed his schooling in the long retrospect he found little of which to boast. Neither was his first start in life an impressive one—a clerkship in a Charleston dry goods house, where he soon wearied of the work. Returning home he entered as a student in the law office of John M. DeSaussure and, at the age of twenty-one, was admitted to the bar. Shortly thereafter he formed a partnership with James Pope Dickinson.

With the coming of the war with Mexico the young partners closed up their office and departed for the front. How different their fates had been! Dickinson was killed while leading a charge at Cherubusco—he, Kershaw, was struck down by fever and sent home. After recovering his health he had divided his time for the next twelve years between law and politics, acquiring a growing proficiency in the first and gaining a reputation for high-minded public service in the second.

In December, 1860, he had been sent as a delegate to the state secession convention. Without debate the fateful ordinance was passed and the dread forces set in motion which were to fulfill the ominous prophecy of William Tecumseh Sherman, then head of the Military Academy of Louisiana, "The country will be drenched in blood." He had immediately undertaken to recruit the second of the infantry regiments authorized by the state and was elected its Colonel. The regiment was ordered to join Beauregard's forces at Charleston, where from Morris Island he witnessed the bombardment of Fort Sumter.

Early the following month his regiment had volunteered for Confederate service and was sent to Virginia, arriving in time to participate in the fighting at Bull Run. In February, 1862, he had been promoted to the command of the First Brigade of McLaws' Division of Longstreet's Corps of the Army of Northern Virginia. "Kershaw's Brigade," as his command came to be known, – which included his own and other South Carolina regiments –fought as many battles, endured as many hardships, and gained as many laurels in the three years which followed as any command in the Confederate forces.

It had been actively engaged in the stubborn fighting on the Peninsular, where the Confederate tide of victory met a bloody check on the slopes of Malvern Hill. The hopeless but heroic charge of "Kershaw's" men against that impregnable position had been in the face of a deadly fire which, as an old comrade in arms later had written, "caused our already thinned ranks to melt like snow before the sun's warm rays."

His brigade had been in the thick of the melee at Second Bull Run and South Mountain. Thus Longstreet had written—with something of the awesome and sinister beauty of Dante—of the time it went into action at Sharpsburg, "The fire spread along both lines from left to right, across the Antietam, and back again, and the thunder of the big guns became continuous and increased to a mighty volume. To this was presently added the sharper rattle of musketry, and the surge of mingling sound sweeping up and down the field was multiplied and confused by the reverberations from rock and hills. And in the great tumult of sound, which shook the air and seemed to shatter the cliffs and ledges above the Antietam, bodies of the facing foes were pushed forward to closer work, and soon added the clash of steel to the thunderous

This is the eleventh in a series of biographical studies of eminent soldier-lawyers written by Mr. Farnum for the JOURNAL.

crash of cannon shot. Under this storm, now Kershaw advanced his men. Through the open, on through the woods, with a solid step, these brave men went, while the battery on their left swept their ranks with grape and canister."

At Fredericksburg had come another dramatic opportunity to demonstrate the cool and courageous, yet dashing, quality of his leadership. Upon the fall of their commander he had been called upon to assume direction of the Georgia troops holding the sunken road at the foot of Marye's Heights. He recalled the stories which were current of how he had responded to the command to take over. It was said that almost before he had finished scanning the order, he vaulted into the saddle and galloped out into the hail of bullets with no more hesitation than he would have shown on his way to a political barbecue in his native South Carolina. It was added that when he emerged on an elevation and reined in his horse, a conspicuous target for Union rifles, the enemy withheld their fire in tribute to his heroism — a chivalrous act which he acknowledged by doffing his hat ere he plunged out of view. Ah yes, he had done his duty that day as becomes a soldier, but perhaps in the retelling some fancy had become blended with the facts.

His brigade had come to bloody grips with the foe again at Chancellorsville, and marched north with Lee into Pennsylvania on that audacious thrust which was parried on the fields of Gettysburg. Tragically depleted by the losses at Gettysburg his forces had then been transferred westward to fight at Chickamauga and in all the engagements of the Tennessee campaign. In the spring had come his promotion to Major General to supersede his old chief McLaws in command of the First Division of Longstreet's Corps and his orders to rejoin Lee in the epic struggle with Grant in Virginia.

Though a modest gentleman, now that memories were all that were left him, it was pleasant to recall what an officer serving in his brigade had written of him as he prepared to lead it into action in the Wilderness. "While forming his lines of battle, and while bullets were flying all around, General Kershaw came dashing down in front of his column, his eyes flashing fire, sitting his horse like a centaur—that superb style as Joe Kershaw only could—and said in passing us, 'Now, my old brigade, I expect you to do your duty.' In all my long experience, in war and in peace, I never saw such a picture as Kershaw and his war horse made in riding down in front of his troops at the Wilderness." And in the sequel the men had justified all his expectations. At Spotsylvania and again at Cold Harbor his men fought like lions as Lee slugged it out with Grant.

After some service in the trenches about Petersburg to which Lee had retired, he had been ordered to reinforce Early in his campaign in the Valley. In September he had been recalled by Lee, and Early thus weakened had been attacked and defeated by Sheridan at Lexington and at Fisher's Hill. Back to the Valley again he had led his men. Here in October he participated in that curious and dramatic struggle at Cedar Creek—a battle which had begun with a Federal rout and ended with a Confederate stampede.

He had then rejoined Lee in the desperately held trenches about Petersburg. In January, 1865, his old brigade had been detached from his division and sent home to confront the Sherman juggernaut which was rolling northward after its famous march through Georgia. On April 3 Lee evacuated Petersburg. Three days later the curtain fell on his own great career as a soldier, when outnumbered and surrounded at Sailor's Creek he had been forced to surrender. They said that after the battle, in a wistful tribute to his old command, he had declared, "If I had only had my old brigade with me I believe we could have held these fellows in check until night gave us the opportunity to withdraw." Years later he, himself, had written of the night following that day of disaster, "As I lay in the midst of Custer's squadrons watching the cold insensate stars, I buried all my dreams of Southern independence. The god of battles had deserted our banners. I bowed my soul in submission and tried to say, 'Thy will be done. From henceforth be mine the task, as far as I may, to staunch my country's bleeding wounds.'" As a prisoner of war, he had been sent North and confined at Fort Warren in Boston Harbor until mid-summer when he had been released and permitted to return home.

With what mixed emotions he had come back to South Carolina—so despoiled of the flower of her youth and so devastated under the harrow of war. It was not in his nature, however, to yield to useless regrets. He had resumed the practice of law and had assumed an active role in state politics. In 1877 he had been elected circuit judge and served until 1893, when failing health forced him to retire. As a judge he had always admonished himself to speak in moderate tones, to listen well and ask few questions, to inculcate respect for the law by the dignity of his deportment, and to inspire the lawyers who appeared before him, particularly the younger practitioners, with confidence. He had been especially interested in the equity jurisdiction of his court and had striven to have his decrees reflect a painstaking study of the evidence and an exhaustive research of the law. Speaking to a delegation of the bar at the time of his retirement, he had said, among other things, "Gentlemen, I retire tomorrow to the shades of private life, to seek in some way the necessities of life. I do so without regret. What can I regret?"

As a last gesture of the affection and esteem in which he was held by his fellow citizens, he had been made postmaster of his native city. Additionally, he had been commissioned by the legislature to collect the war records of the sons of South Carolina — a commission which he knew would be unfulfilled.

(Continued on page 613)

CURRENT EVENTS

New Procedure for Section and Committee Reports

THE Board of Governors has adopted a new procedure for dealing with section and committee reports. A member of the Board has been designated to keep in touch with the work of each section and committee so as to effect a continuing liaison with the Board. If, as a result of this, the views of the sections and committees and those of the Board are not harmonized an opportunity will be given for the section or committee to present its views to the full Board before any comment or recommendation is made.

When comments or recommendations are made there will not as in the past be a merely formal statement by the Secretary but the reasons for the action of the Board will be stated. Moreover if there is a division of opinion in the Board, not only will this be stated but the views of the majority and minority will be presented to the House by members of the Board.

Tax Course Program Inaugurated

BALTIMORE, Cincinnati, Shreveport and Wilmington will be the first cities where the American Bar Association's Section of Taxation will conduct the course on the Fundamentals of Federal Taxation which it is sponsoring in cooperation with local bar associations and the Practising Law Institute. This course is designed to provide general practitioners with a basic working knowledge of the substantive and procedural aspects of the federal tax laws.

Recognized tax specialists will give the lectures. The tuition fee will be $25. The courses will meet for two hours, one evening a week, for a period of twelve or more weeks.

The tax course program is national in scope. Generally the course will be given in any city where the local bar association believes at least fifty lawyers will attend. Under the plan, the local bar associations do not incur any financial risk, the entire responsibility being assumed by the Practising Law Institute. Plans are already under consideration to give the course also in Birmingham, Davenport, Iowa, Buffalo, Los Angeles, Charleston, West Virginia, Akron, Toledo, Dayton, Paterson, New Jersey, Nashville, Portland, Oregon, Grand Rapids, Detroit, New Haven and Chattanooga and other cities.

In cities where it will facilitate attendance by lawyers from surrounding communities, the course will be concentrated into a period of three days, with classes in session throughout the day and evening.

Printed summaries of the law on which the lectures will be based, are being prepared by a group of twenty experts and will be distributed without additional charge, to those enrolling in the courses. Others may subscribe for the summaries alone for a fee of $10. Those wishing to do so, should send their remittances to the Practising Law Institute, 150 Broadway, New York 7, New York. The summaries will be issued in weekly installments beginning about the end of October.

Under the plan, the local bar associations do not incur any financial responsibility or risk, which is assumed by the Practising Law Institute.

Weston Vernon, Jr., chairman of the Section of Taxation, 15 Broad Street, New York 5, New York, or Harold P. Seligson, director of the Practising Law Institute, will furnish additional information about the tax course program to bar association officers who wish to offer the course in their cities.

Inter-American Bar Meets at Rio de Janeiro

LAWYERS from nearly all of the nations of this hemisphere assembled in Rio de Janeiro, from August 7 to 12, 1943, for the Second Conference of the Inter-American Bar Association. War thinking was reflected in the seriousness with which the delegates met and discussed war aims, hemispheric solidarity for the Americas, the punishment of war criminals, the judicial settlement of international disputes, the framework for a post-war world in which peace would be assured by international cooperation, and similar problems. The interest of the delegates in the status of aviation in the post-war world may have reflected the circumstance that practically all of them arrived at Rio by airplane.

The enthusiasm with which the Brazilians welcomed their visitors was unbounded. The hospitality shown to the visiting lawyers reemphasized the reputation of the Brazilians for making their guests feel welcome. The Brazilian Government, members of the Cabinet, the Courts and of the Brazilian Bar Association provided receptions, luncheons, dinners and entertainment in lavish fashion.

Many men of prominence, particularly in South America, were among the delegates. The list included chief justices and members of national supreme courts, cabinet officers, members of national legislatures, ambassadors and ministers and practicing lawyers of more than national reputation. Notwithstanding the difficulties of transportation priorities, the delegation from the

United States totalled fifteen persons, including three from Puerto Rico.

The work of the conference was carried on by nineteen committees, which dealt with the subjects of an Inter-American Academy of International and Comparative Law at Havana, Cuba; Immigration, Nationality and Naturalization Laws; Patents, Trade-marks and Copyrights; the Law of Trusts and Trustees; the Civil Status of Persons; Taxation; Administrative Law and Procedure; Customs Law; Commercial Treaties; Legal Education; Comparative Constitutional Law; Aviation, Telecommunications, Maritime and Highway Transportation; Industrial, Economic and Social Legislation; Penal Law and Procedure; Fisheries; and Post-War Problems.

As a result of a series of meetings of these committees, approximately 120 resolutions were proposed. At the final plenary session of the conference the proposals of all the committees were adopted by a majority of the delegates, reservations being made, however, by the delegations from Bolivia, Canada, Chile, Dominican Republic, and the United States. These resolutions will be printed in the four official languages of the conference, namely, Portuguese, English, Spanish and French.

Of principal popular interest were the resolutions proposed by the Committee on Post-War Problems. This committee operated under the able and experienced chairmanship of Dr. Raul Fernandez, long active as representative of Brazil in the League of Nations. These resolutions include a recommendation with respect to post-war international organization, sponsored by the members of the United States delegation, which is similar to the resolution adopted by the House of Delegates of the American Bar Association at its Chicago meeting in March, 1943. (*See* 29 A.B.A.J. 248). This resolution reads as follows:

> RESOLVED, That the Inter-American Bar Association endorses as a primary peace objective the establishment and maintenance, at the earliest possible moment, of a universal international system, with judicial, legislative and executive functions based on moral and juridical principles and on the internal experience of all nations and adapted to the requirements and limitations of international cooperation.

A resolution, reflecting one of the current projects of the American Law Institute, recommended the preparation of a "draft declaration of the rights and duties of man." Measures to bring about the execution of judicial or arbitral decisions were endorsed. An extensive resolution related to an international court system. It favored the reestablishment of the Permanent Court of International Justice, and the maintenance of the Permanent Court of Arbitration. The resolution proposed that the jurisdiction of the International Justice Court be broadened by requiring the submission of all states to the international judicial power, by making the court accessible to individuals whose rights have been violated by states and by removing more subjects now deemed to be within the discretionary judgment of domestic legislation and making them susceptible to international judicial decision.

The Conference accepted the invitation received from the Bar Association of Mexico (Barra Mexicana) to hold the next meeting in Mexico City. Dr. Carlos Sanchez Mejorada, president of the Barra Mexicana, was elected as the new president of the association, and Dr. Edmundo de Miranda Jordao was elected an honorary president, in recognition of his services to the association.

The absence of capacity to bind the countries through whose bar association the delegates appeared, removed the requirement of virtual unanimity and exactness of expression requisite to a meeting of governmental representatives. Many of the delegates, however, were the same men who might have acted in a governmental capacity. The processes of understanding, education and confidence in each other's integrity worked rapidly. The common background of the lawyer's accustomed approach made for quick exchanges of thought notwithstanding diversities of language. It was the consensus that the Inter-American Bar Association is an instrument of great potential value to the countries represented, the profession and the individuals participating.

Changes in the Board of Editors

BECAUSE of his engrossing duties with the Office of Strategic Services of the United States Army, Mr. James Grafton Rogers, a member of the Board of Editors of the JOURNAL since 1941, asked the Board of Governors to relieve him of his editorial duties for the duration of his war service. This request was granted and on August 21, Mr. Walter P. Armstrong of Tennessee, who had served a a member of the Board of Editors from 1934 until his election as President of the Association in 1942, was elected as Mr. Rogers' successor during the emergency.

To succeed Mr. Charles P. Megan, of Chicago, who has been a member of the Board of Editors since 1933, and whose term expired with the adjournment of the 1943 Annual Meeting, the Board of Governors selected Mr. Tappan Gregory, also of Chicago, State Delegate from Illinois, and chairman of the Association's Committee on War Work. Mr. Gregory's distinguished father, the late Stephen S. Gregory of Illinois, President of the Association in 1911-12, was the first Editor-in-Chief of the JOURNAL, when it was changed from a quarterly to a monthly magazine.

Code of Canon Law Anniversary

THE faculty of Canon Law of The Catholic University of America is planning to commemorate the twenty-fifth anniversary of the Code of Canon Law with a series of lectures at the university to begin this month and continue up to February.

WAR NOTES

BY TAPPAN GREGORY

Of the Chicago Bar

WHERE a soldier has been divorced before induction and the decree grants him certain rights of visiting his child, the custody of whom was given to the wife, on an application by the soldier asking that his parents be allowed visits with the child, it was error for the chancellor to grant the soldier's petition without giving the child's mother a right to be heard in view of the fact that she had alleged, in answer to the petition, that the parents of the child's father were emotionally and temperamentally unstable. This was the holding of the Appellate Court of Ilinois, First District, Second Division.

In determining the federal court's jurisdiction on the ground of diversity of citizenship, the District Court for the Southern District of California, Central Division, holds that the domicile of American citizens of Japanese ancestry, evacuated from California and relocated in Arizona by authority of public proclamation and orders of the Commanding General of Western Defense Command of the United States Army, does not become Arizona.

Application was made in the District Court for the Western District of Oklahoma by a selective service registrant asking for an order in the nature of mandamus directing the local board to classify him in III-C and for a temporary injunction restraining the board from ordering him to report for induction. The motion to dismiss the registrant's complaint for failure to state a cause of action within the jurisdiction of the district court was sustained, the court holding that the acts of local Selective Service boards may not be reviewed by the courts in such a way as to enable the courts to substitute their discretion for that of the draft boards and that the proper remedy of a registrant in case the board acts arbitrarily or exceeds its authority is by writ of habeas corpus.

The fact that a sailor is insured is held by the District Court of Appeals, First District, Division 1, California, to be a factor to be considered by the trial court in the exercise of its discretion in determining whether or not a personal injury action against the sailor should be stayed under the Soldiers' and Sailors' Civil Relief Act.

The Circuit Court of Appeals for the Ninth Circuit holds that the condemnation of land for the expansion of the factory of a company engaged in the production of steel forgings for naval purposes is the taking of such lands for a public use, even though there might be some incidental advantage to the private corporation.

The defendant contracted to pay brokerage commissions for services in soliciting and obtaining a war contract. When sued upon his contract to pay these commissions, he defended on the ground that the contract was invalidated by executive order of December 27, 1941, requiring that every contract entered into pursuant thereto should contain a warranty that the contractor had not employed any person to solicit the government contract for a commission or fee. The Supreme Court of New York, Special Term, New York County, sustained a motion to strike this defense on the ground that the executive order does not invalidate or render illegal and void and against public policy any such contract to pay commissions, irrespective of what might be the rights of the government under the executive order.

A married soldier on duty at Gowen Field near Boise, Idaho, by leave of his commanding officer, lived in Boise. He decided to make his future home there and with that purpose and intent registered in Boise as a voter and elector. He filed his complaint for divorce in that jurisdiction. The lower court found that it was without jurisdiction and denied the divorce on the ground that a person could not, while serving in the armed forces, establish a new residence. The soldier made application for a peremptory writ of mandamus to require and direct one of the judges of the district court to take jurisdiction of the case. The Supreme Court of Idaho ordered the writ to issue, two of the judges dissenting.

Petition for a writ of certiorari by a registrant asking the District Court for the Western District of Wisconsin to command the clerk of one of the Selective Service local boards to certify the petitioner's case in respect of his classification was denied by that court. The court held that the action of the board was not quasi-judicial and therefore not reviewable by the district court, and declined to take jurisdiction of the petition.

In two cases in the Supreme Court of Georgia it was held that constitutional and statutory provisions that a divorce case shall be brought in the county where the plaintiff resides, if the defendant is a nonresident of the state, are mandatory and jurisdictional.

The Supreme Court of New York, Onondaga County, has given an interpretation of that provision of the Soldiers' and Sailors' Civil Relief Act prohibiting sale, foreclosure, or seizure of property unless upon an "order previously granted" by the court, and finds that these words refer to any order made before and at any time up to the judgment of foreclosure. The court says that any other construction would leave mortgagees without protection if a soldier defendant entered the service before the act took effect or before the action was begun.

JUNIOR BAR NOTES

By HUBERT D. HENRY

Secretary, Junior Bar Conference

JAMES P. ECONOMOS, of Chicago, was elected chairman of the Conference to succeed Joseph D. Calhoun, of Media, Pennsylvania, at the Tenth Annual Meeting held in Chicago. He is the tenth chairman of the Conference, which was organized in Milwaukee in 1934. John E. Buddington, of Boston, was elected vice chairman, and Hubert D. Henry, of Denver, was reelected secretary.

Chairman Economos has announced that appointments will be made as promptly as possible in order that the extremely important war work of the Conference may go forward without interruption.

The Executive Council will consist of the following: First Circuit—Charles W. Tobey, Jr., of Concord, N. H.; Second Circuit—Lyman M. Tondel, Jr., of New York City; Third Circuit—Paul T. Huckin, of Englewood, N. J.; Fourth Circuit—C. Keating Bowie, Jr., of Baltimore, Md.; Fifth Circuit—T. Julian Skinner, Jr., of Birmingham, Ala., reelected; Sixth Circuit—E. Clark Morrow, of Newark, Ohio, reelected; Seventh Circuit—Julius Birge, of Indianapolis, Ind., reelected; Eighth Circuit—Ray Nyemaster, Jr., of Des Moines, Iowa; Ninth Circuit—Walter E. Craig, of Phoenix, Ariz.; Tenth Circuit—Gordon B. Christenson, of Salt Lake City, Utah, and District of Columbia—Charles S. Rhyne, Washington, D. C.

The Conference Meeting, as has been the Conference program during the past year, was devoted principally to the war work of the Conference and allied programs. The Traffic Court program has moved forward at a terrific pace set by Chairman Watson Clay and Secretary James P. Economos. The Legal Assistance program contributed very materially to the war work of the American Bar Association by preparing the compendiums on model forms

JAMES P. ECONOMOS

of wills, powers of attorney and common legal problems of persons in the service. This Committee was headed by Park Street, of San Antonio, Texas. The War Readjustment program, headed by Lyman M. Tondel, Jr., is progressing rapidly in the solution of problems created by the necessity of taking care of the legal matters of persons whose attorneys enter service, and the reentry of attorneys into practice after the war. The Committee on Relations with Law Students, under the chairmanship of Charles B. Stephens, of Springfield, Ill., is making plans for post-war participation of law students in moot court and law review competitions, student memberships in bar associations, student bar associations, and other activities. The Committees in Aid of the Small Litigant, Restatement of the Law, and Procedural Reforms are completing work already under way. The Conference program of activities for 1943-1944 provides for the continuance of these committees and calls for the appointment of Committees on Cooperation with Inter-American Bar Association, Cooperation with Junior Bar Groups, and Membership.

The Fourth Annual Meeting of Delegates from Affiliated State and Local Junior Bar Organizations had the pleasure of hearing Col. Edward S. Shattuck, of Washington, chief counsel, Selective Service System, discuss "Legal Developments in the Selective Service System." Col. Shattuck's discussion of the selective service problems was frank and enlightening to the delegates. Col. Shattuck made it clear that the function of selective service is to provide the number of men required from time to time by the services, and that the Selective Service System has no control over the number of men called from time to time. He stated that Selective Service, in spite of tremendous administrative difficulties, hoped to arrange state and local calls in such a way that groups are exhausted simultaneously. He was speaking, in this connection, of the expected draft of fathers.

The social side of the meeting was not entirely eliminated, and the Younger Members Committee of the Chicago Bar Association, and the Younger Members Section of the Illinois State Bar Association received the thanks of the Conference for some excellent parties given the attending members, of which the Junior Bar dinner dance was the highlight.

Awards of Merit were again given to outstanding state and local junior bar groups. The awards for outstanding general bar activity were given to the Junior Bar Section of the Alabama State Bar Association, and to the Junior Bar Section of the Bar Association of St. Louis. The awards for special war work were given to the Junior Bar Section of the State Bar of Michigan, and the Younger Members Committee of the Chicago Bar Association.

Letters to the Editors

To the Editors:

I THINK it little short of disgraceful that the front cover of the AMERICAN BAR ASSOCIATION JOURNAL should carry the picture of former President Rutherford B. Hayes. If I read history correctly, Mr. Hayes' term as President of the United States was the result of a stolen election. Regardless of how Mr. Hayes felt about the election being stolen, the fact still remains that this was the manner in which he went into office. His acceptance of the presidency nullified the fine life he had lived prior to that time. The law is perfectly clear that the possessor of stolen goods is as guilty as the thief. I should think this rule would apply to elections as well as chickens.

I know of no better way to bring the AMERICAN BAR ASSOCIATION JOURNAL into disrepute than to disgrace its pages with biographies of men who owe their prominence to dishonest acts, either on their part or their henchmen.

When may we expect the cover portrait and a biography of the late Huey Long?

R. E. BOOKER

Richmond, Va.

To the Editors:

THE cover portraits of distinguished lawyers in uniform, some of them in the Northern Blue and others in Confederate Gray, are vivid reminders of what our lawyers have done in war. Although it has nothing to do with the appropriateness of their inclusion in the JOURNAL's lawyer-soldier series, it is noteworthy that several of these gallant men went on to hold high offces, including that of President of the United States.

The portrait on the August cover of Rutherford B. Hayes, and George R. Farnum's article concerning his qualities as a lawyer and as a soldier, bring to mind the late Newton D. Baker's declaration that Mr. Hayes was "the only great President who is not known as a great President." Time will bring no solution of the controversy as to the regularity of his election to the Presidency; but this does not dim his distinction as a lawyer or as a soldier. As President, he strove to heal the wounds of war and reunite his country; he strove to improve the standards of the Federal Civil Service, and he recommended to the Congress, in his inaugural address, the adoption of an amendment to the Constitution "prescribing a term of six years for the Presidential office and forbidding a reelection."

WILLIAM L. RANSOM

New York City

To the Editors:

BROTHER Gould Brown, in your September issue, has stated that in recent bar association meetings he has "noted a predominant theme, first concerning the Depression and next concerning the War; namely, THAT IF THIS COUNTRY IS GOING TO BE SAVED, THE LAWYERS ARE GOING TO HAVE TO DO IT!", and he has asked "If we are so all-fired omnipotent, why in Sam Hill did we let the country get in this shape in the first place?"

Now, it is a well known fact that it may be impossible for a physician to cure a malady which he easily could have prevented had his advice been sought seasonably.

Preventing Depressions or Wars is indeed a large order, but I would remind Bro. Brown the "case" has never been put in the lawyers' hands.

MALCOLM P. WALLACE

Louisville, Kentucky

To the Editors:

I HAVE just read with interest the reason said to have been given by Mr. Justice Douglas, as stated in the September number of the JOURNAL, (p. 479) for the recent reversal of the Nebraska Supreme Court by the United States Supreme Court. As your readers will recall, the explanation suggested by Justice Douglas was that the Nebraska Court had made the mistake of attempting to follow the reasoning of the United States Supreme Court as set out in a prior opinion of that tribunal.

I was reminded of the views expressed by the California Supreme Court some years ago in an opinion in which that Court likewise had occasion to follow as best it could the devious path laid out by the federal Supreme Court in dealing with the question of the validity of corporate license taxes. The California Court, in a prior decision, relying on certain decisions of the United States Supreme Court, had held the California corporate license tax to be unconstitutional. In a later case the same question was again raised in the California Court on the basis of two later decisions of the federal Supreme Court. The California Court felt itself forced, by virtue of the more recent holdings of the Federal Court, to reverse its prior ruling and to adjudge the statute to be valid.

Mr. Justice Henshaw, writing the opinion for the California Court, after calling attention to the holdings of the Federal Court on the subject, and quoting from the language of one of its opinions, said:

> We are constrained to admit our inability to harmonize this language and these decisions, though we make haste to add that undoubtedly the failure must come from our own deficient powers of perception and ratiocination, and for this deficiency it is no consolation to us to note that our brethren of the Supreme Court of Montana are similarly afflicted. . . .

The opinion of the California Court ends with the following biting sentence:

> And in conclusion we may add that if again we are mistaken, it is comforting to know that the doors of the Supreme Court of the United States are open for the correction of our error.

ROBERT MCWILLIAMS

San Francisco, Cal.

To the Editors:

THE JOURNAL for August 1943 carries on the best traditions of the American Bar. The symposium

on post-war activities of the Bar in that issue continues consistently the work carried on in its pages for developing order out of chaos, law instead of anarchy. In this the lawyer is indispensable.

The presentation of a number of viewpoints tends to make plain that not all lawyers see alike either ills or remedy. Two features of the symposium impress me. One is the total absence of differentiation of mass (state) and individual (citizen) in global government. The other is "the punishment of the guilty leaders." (*See* William Logan Martin).

The latter has become so common in the press and on the air but rarely referred to by lawyers that its appearance in the JOURNAL moves me to inquiry. Has any lawyer defined the relation between "government of law, and not men" and the "trial" of war criminals?

* * *

The Anglo-American theory of law has for centuries, at its best, been that there must be an authorized tribunal to hold trial, an established law to break, an infraction which was such at the time of commission of the acts charged against the accused, the promulgation of such law by an organized government having jurisdiction of the territory where the disregard of the law later took place, etc.

World government, sufficiently organized to declare statutes, to interpret them, to enforce them, to prescribe sanctions as to each individual who breaks them, is desirable as to conduct which affects all mankind.

Is this theory wrong, or have we learned to embark again on a much-charted sea where "Force rules the world; has ruled, shall rule it. Meekness is weakness; Strength is triumphant. O'er the whole earth still is it Thor's day?"

J. C. RUPPENTHAL

Russell, Kansas

To the Editors:

IF the present system of hearing appeals is adequate, it is improvident to introduce any change. However, a reading of the report of a special committee of the American Bar Association, entitled "Methods of Reaching and Preparing Appellate Court Decisions," creates the feeling that much improvement upon the present system can be made.

At present the court allows the same amount of time in most instances for the oral argument of a comparatively simple case as for one involving questions of great magnitude. The time of court and counsel is wasted in many cases because counsel works up to, but never makes, his climax because of the time limit. Counsel is often offended because the court has consumed his time with questions, feeling that the court has not seen his point. Again, the court, out of deference to counsel, may fail to interrupt because of the time element. Also, cases are frequently argued before a tired court.

Most attorneys, we believe, leave the appellate court on submission day feeling that the proceedings have been superficial and that only a partial and impressionistic presentation of the case has been made. Some appellate courts, it is said, regard oral argument as a pure waste of time, a "Courtesy Day" for the members of the Bar.

The principal features of a proposal in Texas for the conference method of hearing cases on appeal are:

1. A counsel table conference presentation of the case with fewer formalities.

2. The consecutive discussion of points on appeal with a presentation of the point of error by appellant and reply of appellee as each point arises.

3. The substitution of a conference between court and counsel for oral argument.

4. The submission of only one, or not more than two, cases on submission day.

5. Flexibility in the time element to the end that a conference should have no time limit, but should consume only such appellate court time as may be usefully employed, and should vary with the magnitude and difficulty of each particular case.

6. A study of the facts by one or more members of the court prior to the conference.

We submit the following possible advantages of the proposed new method:

1. Useless and tiresome discussion and oratory would be obviated.

2. The court would be permitted to utilize as much time in conference as it considered adequate for each case.

3. The participation of counsel in the conference of the court relating to the facts would be permitted. Since appellate courts now have fact conferences in chambers, a portion of this time could be saved.

4. Directness and orderliness would be gained in that points on appeal could be taken up consecutively and answered one at a time, as in a trial court.

5. Confusion would be avoided, because the facts of one or two cases a day would be more easily retained by the court than the facts of several.

6. Embarrassment of the court, due to frequent interruptions and the possible resentment of counsel, would be relieved, making the court feel more at liberty to question counsel and to separate the wheat from the chaff.

7. Inequalities of time allowance

for counsel would be abolished. The appellant now has a rejoinder period which is denied the appellee.

8. A conference spirit in the handling of litigation would be created, resulting in the feeling of counsel that a full presentation of the case had been made and that the court had seen the point which counsel desired to make.

9. More assurance against one-man decisions would be gained.

We believe that the conference method covers most of the suggestions for improvement contained in the report of the special committee published by the Section of Judicial Administration.

BENNETT B. PATTERSON
Houston, Texas

To the Editors:

L. WARD Bannister, a Denver lawyer and member of our Association, has a son, Wayne Bannister, likewise a member of the Association, serving as a first lieutenant attached to a Corps Headquarters in North Africa.

Father Bannister wanted to know some time ago how to reach that son by cable if necessity should demand. Accordingly, he wrote to the War Department in Washington, for information. Answer came back that the way did not exist. Apparently, however, all was not lost, for a few weeks later a Denver Press reporter called up the elder Bannister and asked if a letter had arrived informing him how to reach the distant son by cable. The father advised the reporter that no such letter had been received, whereupon the reporter read what purported to be a letter from the son and added that the contents of the letter had come to his notice through press dispatches obtained from Army sources in North Africa. A few weeks later the original letter reached the father. It read as the reporter had said it would:

L. Ward Bannister
Equitable Building
Denver

Dear Sir:

I regret to inform you that the only circumstances under which you may send a cable to your son are in the event of family emergency. In such a case a cable may be sent to him through his Army Post Office address by the American Red Cross.

Wayne A. Bannister
1st Lieutenant

GEORGE MAURICE MORRIS
Washington, D. C.

JOSEPH B. KERSHAW

(Continued from page 606)

Epilogue

He had but a short time to await now,

"Till like a clock worn out
with eating time,
The wheels of weary life at
last stood still."

They buried him in the old Quaker burying grounds at Camden with all the honors due a brave soldier and gallant southern gentleman.

Toward the end of his life he made this profession of faith, "I started at the bottom. Whatever success I may have attained in life is due to a kind and good Providence. In every station and in every crisis of life, I have felt the hand of that Providence and have seen it as distinctly as if it had been my father's hand lifting me out of difficulty." Let us believe that in his last hour he felt the same strong and sure hand leading him through the portals to eternal life.

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★ ★ ★

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